

IN THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

v.

Cause No. CR97-369

(former Montgomery Cause No. 7447)

CURTIS GIOVANNI FLOWERS

\*\*\*\*\*

TRANSCRIPT OF ALL COURT PROCEEDINGS HAD AND DONE IN THE  
PRETRIAL, TRIAL AND POST TRIAL PROCEEDINGS BOTH WHEN THE  
MATTER WAS BEFORE THE CIRCUIT COURT OF MONTGOMERY COUNTY,  
MISSISSIPPI, AND AFTER IT WAS SUBSEQUENTLY TRANSFERRED TO  
LEE COUNTY, MISSISSIPPI; ALL PROCEEDINGS BEING BEFORE THE  
HONORABLE CLARENCE E. MORGAN, III, CIRCUIT JUDGE, FIFTH  
CIRCUIT COURT DISTRICT, AND THE TRIAL OF OCTOBER 13-17,  
1997, BEING BEFORE A JURY OF TWELVE MEN AND WOMEN, DULY  
IMPANELED, IN TUPELO, MISSISSIPPI.

\*\*\*\*\*

APPEARANCES FOR TRIAL:

Present and Representing the State of Mississippi:

HONORABLE DOUG EVANS

District Attorney

HONORABLE KEVIN HORAN

HONORABLE WALTER BLECK

Assistant District Attorneys

P. O. Box 1262

Grenada, Mississippi 38901

FILED  
TIME \_\_\_\_\_

DEC 10 1997

JOYCE R. ...  
CIRCUIT CLERK

*Carrie Kelle* D.C.



1 Present and Representing the Defendant:

2 HONORABLE JOHN M. GILMORE

3 Attorney at Law

4 P. O. Box 151

5 Durant, Mississippi 39063

6  
7 HONORABLE BILLY J. GILMORE

8 Attorney at Law

9 P. O. Box 629

10 Lexington, Mississippi 39095

11  
12 Reported By Linda F. Burchfield, C.S.R. #1019

TABLE OF CONTENTS

	<u>Page No.</u>
Style, Number and Appearances for trial itself .....	1
Arraignment on 3/25/97 .....	3
Motion for Discovery on 3/25/97 .....	8
Motion for Change of Venue of 4/28/97 .....	11
Motion of State on 6/6/97 to draw blood of Defendant ..	19
Drawing of Special Venire on 7/1/97 .....	21
Hearing on Defense Motions of 7/1/97 .....	28
Motion to Set Trials .....	28
Motion for Speedy Trials .....	29
Motion to Quash the Indictment .....	30
Motion of Assertion of Right to be Present .....	35
Motion for Process Instructions .....	36
Motion regarding juror questionnaires .....	37
Motion for Compensation of Jurors at Current Wages and for Reimbursement of Primary Care Costs .....	37
Motion to Prohibit Jury Dispersal .....	39
Motion for Additional Peremptory Challenges .....	40
Motion to Invoke the Rule Prior to Voir Dire .....	42
Motion for Individual Voir Dire .....	45
Motion for Opportunity to Rehabilitate any Prospective Juror Who Expresses Reticence When Asked to Kill a Fellow Human Being .....	46
Motion to Set Certain Dates for Each Witness Expected to be Called .....	49
Motion in Limine .....	50
Motion to Exclude .....	58
Motion to Preclude Admission of Gruesome and Highly Prejudicial Color Photographs of Deceased .....	60
Motion to Enjoin Victims' Family from Showing Emotion in the Courtroom While Sitting as Spectators .....	61

## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
Demand for Notice of Aggravating Circumstances and for Disclosure of Evidence Supporting Mitigating Circumstances .....	65
Motion to Adjourn at a Reasonable Time .....	66
Motion for Disclosure of any Possible Basis of Judicial Recusal .....	67
Motion to Preclude the Prosecution from Seeking to Rely on Miss. Ann. Section 99-19-101(7) (b) (c) and (d) ...	68
Renewed Motion for Discovery .....	69
Motion to Control Pretrial Publicity .....	76
Motion to Require the Court Reporter to Transcribe the Entire Proceedings .....	79
Pre-trial Motion Hearing of 9/22/97; objections to excusing of potential jurors requesting dismissal ..	81
Motion of State to consolidate Montgomery County cause numbers 7447 and 7450 .....	89
Court Ruling on State's Motion .....	91
Pre-trial Hearing of 10/1/97; State reverses their former motion to consolidate .....	94
Court Ruling on Motion .....	95
Discussion of exhibits and witnesses for trial .....	97
Pre-trial Hearing of 10/1/97 concluded .....	106
10/13/97 - Motions in Chambers - JURY OUT .....	107
Jury Qualified .....	122
Court gives jurors instructions before noon recess .....	123
Case Called; Parties Announce Ready .....	125
Voir Dire Examination by the Court .....	126
Voir Dire Examination by Mr. Evans .....	196
Voir Dire Examination by Mr. Billy Gilmore .....	210
Further Voir Dire by the Court .....	216
Challenges for Cause - JURY OUT .....	219
Selection of Jury - JURY OUT .....	227

TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
<u>Batson</u> Challenge - JURY OUT .....	233
Jury Called to Box .....	242
Preliminary Matters .....	243
Opening Statement by Mr. Evans .....	245
Opening Statement by Mr. Billy Gilmore .....	249
Limiting Instruction by the Court and overnight instructions to the jury .....	252
Court Recessed for the Day on 10/13/97 .....	256
Court Opened on 10/14/97 .....	257
<u>WITNESSES: STATE OF MISSISSIPPI</u>	
JOHNNY HARGROVE	
Direct Examination by Mr. Horan .....	261
Cross-Examination by Mr. Billy Gilmore .....	272
Redirect Examination by Mr. Horan .....	281
SAM JONES, JR.	
Direct Examination by Mr. Evans .....	282
Cross-Examination by Mr. Billy Gilmore .....	301
BARRY ESKRIDGE	
Direct Examination by Mr. Horan .....	311
Cross-Examination by Mr. Billy Gilmore .....	315
EDDIE ROBINSON, III	
Direct Examination by Mr. Horan .....	317
Cross-Examination by Mr. Billy Gilmore .....	321
MELISSA SCHOENE	
Direct Examination by Mr. Evans .....	323
Noon Recess on 10/14/97 .....	363
Cross-Examination by Mr. Billy Gilmore .....	363
Redirect Examination by Mr. Evans .....	378

## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
Conference in Chambers - JURY OUT .....	383
DR. STEVEN TIMOTHY HAYNE	
Direct Examination by Mr. Horan .....	415
Cross-Examination by Mr. Billy Gilmore .....	429
CHARLES COLLINS	
Direct Examination by Mr. Evans .....	433
Cross-Examination by Mr. Billy Gilmore .....	438
Redirect Examination by Mr. Evans .....	447
FREDERICK VEAL	
Direct Examination by Mr. Evans .....	451
Cross-Examination by Mr. Billy Gilmore .....	461
Redirect Examination by Mr. Evans .....	466
JAMES EDWARD KENNEDY	
Direct Examination by Mr. Horan .....	467
Cross-Examination by Mr. Billy Gilmore .....	470
Redirect Examination by Mr. Horan .....	478
KATHERINE SNOW	
Direct Examination by Mr. Evans .....	479
Cross-Examination by Mr. Billy Gilmore .....	482
MAURICE BERNARD HAWKINS	
Direct Examination by Mr. Evans .....	485
Cross-Examination by Mr. Billy Gilmore .....	486
Redirect Examination by Mr. Evans .....	489
EDWARD McCHRISTIAN	
Direct Examination by Mr. Horan .....	492
Cross-Examination by Mr. Billy Gilmore .....	494
Court gives jury instructions for overnight .....	496

## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
Court Recessed for the Day on 10/14/97 .....	497
Court Reopened on 10/15/97 .....	498
JACK MATTHEWS	
Direct Examination by Mr. Evans .....	498
Cross-Examination by Mr. Billy Gilmore .....	533
Redirect Examination by Mr. Evans .....	544
CLEMMIE FLEMING	
Direct Examination by Mr. Evans .....	547
Cross-Examination by Mr. Billy Gilmore .....	555
Redirect Examination by Mr. Evans .....	561
PATRICIA ANN HOLLMAN	
Direct Examination by Mr. Horan .....	563
Cross-Examination by Mr. Billy Gilmore .....	574
Redirect Examination by Mr. Horan .....	586
ROXANNE MILLER BALLARD	
Direct Examination by Mr. Evans .....	591
Cross-Examination by Mr. Billy Gilmore .....	596
Redirect Examination by Mr. Evans .....	600
Noon Recess on 10/15/97 .....	601
JOE EDWARD ANDREWS, JR.	
Direct Examination by Mr. Evans .....	602
Cross-Examination by Mr. Billy Gilmore .....	618
Redirect Examination by Mr. Evans .....	626
BILL THORNBURG	
Direct Examination by Mr. Horan .....	628
Cross-Examination by Mr. Billy Gilmore .....	633
Bench Conference .....	643

## TABLE OF CONTENTS

Page No.

## STEVE BYRD

Direct Examination by Mr. Horan .....	645
Cross-Examination by Mr. Billy Gilmore .....	649
Redirect Examination by Mr. Horan .....	653

## DOYLE SIMPSON

Direct Examination by Mr. Evans .....	655
Cross-Examination by Mr. Billy Gilmore .....	663
Redirect Examination by Mr. Evans .....	686

## MARY JEANETTE FLEMING

Direct Examination by Mr. Horan .....	689
Cross-Examination by Mr. Billy Gilmore .....	691
Redirect Examination by Mr. Horan .....	696

## CLAUDE DALE ESKRIDGE

Direct Examination by Mr. Evans .....	697
---------------------------------------	-----

Bench Conference .....	700
------------------------	-----

## HORACE WAYNE MILLER

Direct Examination by Mr. Horan .....	703
Cross-Examination by Mr. Billy Gilmore .....	705

## JOHN JOHNSON

Direct Examination by Mr. Evans .....	710
Cross Examination by Mr. Billy Gilmore .....	721
Redirect Examination by Mr. Evans .....	729

STATE OF MISSISSIPPI RESTS ON CASE IN CHIEF .....	732
---	-----

Motion for Directed Verdict - JURY OUT .....	732
--	-----

Court gives jury instructions for overnight .....	733
---	-----

Court Recessed for the Day on 10/15/97 .....	734
--	-----

Conference in Chambers on 10/16/97 - JURY OUT .....	735
---	-----

## TABLE OF CONTENTS (CONTINUED)

Page No.

Court Reopened on 10/16/97 .....	741
----------------------------------	-----

WITNESSES: DEFENDANT

## ESSIE RUTH CAMPBELL

Direct Examination by Mr. Billy Gilmore .....	741
---	-----

Cross-Examination by Mr. Evans .....	749
--------------------------------------	-----

Redirect Examination by Mr. Billy Gilmore .....	751
---	-----

## ROY HARRIS

Direct Examination by Mr. Billy Gilmore .....	752
---	-----

Cross-Examination by Mr. Horan .....	763
--------------------------------------	-----

Conference in Chambers - JURY OUT .....	769
---	-----

## CONNIE MOORE

Direct Examination by Mr. Billy Gilmore .....	782
---	-----

Cross-Examination by Mr. Evans .....	799
--------------------------------------	-----

Redirect Examination by Mr. Billy Gilmore .....	809
---	-----

## BILLY JAMES GLOVER

Direct Examination by Mr. Billy Gilmore .....	813
---	-----

Cross-Examination by Mr. Horan .....	821
--------------------------------------	-----

## LATOYA HARDING

Direct Examination by Mr. Billy Gilmore .....	822
---	-----

Cross-Examination by Mr. Evans .....	827
--------------------------------------	-----

Redirect Examination by Mr. Billy Gilmore .....	829
---	-----

## EARL CAMPBELL

Direct Examination by Mr. Billy Gilmore .....	831
---	-----

Cross-Examination by Mr. Evans .....	835
--------------------------------------	-----

Redirect Examination by Mr. Billy Gilmore .....	836
---	-----

## KAWILL JONES

Direct Examination by Mr. Billy Gilmore .....	838
---	-----



## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
KAWILL JONES (CONTINUATION)	
Cross Examination by Mr. Evans .....	846
Redirect Examination by Mr. Billy Gilmore .....	848
KITTERY JONES	
Direct Examination by Mr. Billy Gilmore .....	849
Noon Recess on 10/16/97 .....	855
ARCHIE FLOWERS	
Direct Examination by Mr. Billy Gilmore .....	856
Cross-Examination by Mr. Evans .....	859
Redirect Examination by Mr. Billy Gilmore .....	860
MARCUS MOORE	
Direct Examination by Mr. Billy Gilmore .....	861
Cross-Examination by Mr. Evans .....	868
Redirect Examination by Mr. Billy Gilmore .....	870
Conference in Chambers - JURY OUT .....	873
CURTIS GIOVANNI FLOWERS	
Direct Examination by Mr. Billy Gilmore .....	886
Conference in Chambers - JURY OUT .....	926
Cross-Examination by Mr. Evans .....	929
Redirect Examination by Mr. Billy Gilmore .....	954
DEFENDANT RESTS .....	960
<u>WITNESSES: REBUTTAL</u>	
WAYNE MILLER	
Direct Examination by Mr. Horan .....	960
Cross-Examination by Mr. Billy Gilmore .....	961
STATE RESTS ON REBUTTAL .....	963
Consideration of Instructions - JURY OUT .....	964

## TABLE OF CONTENTS - CONTINUED

	<u>Page No.</u>
Court Instructs the Jury .....	987
Final Argument by Mr. Evans .....	994
Final Argument by Mr. Billy Gilmore .....	1004
Final Argument by Mr. Evans .....	1021
Court gives jury instructions not to deliberate yet ...	1026
Trial recessed for the day on 10/16/97 .....	1027
Court reconvened on 10/17/97 .....	1027
JURY RETIRES TO CONSIDER VERDICT AT 8:05 A.M. ....	1028
Bench Conference .....	1029
JURY RETURNS VERDICT AT 9:11 A.M. ....	1031
Verdict: "We, the jury, find the Defendant, Curtis Giovanni Flowers, guilty of capital murder as charged." .....	1032
Jury Polled .....	1032
Conference in Chambers - JURY OUT .....	1034
SENTENCING PHASE - 10/17/97 .....	1035
<u>WITNESSES: STATE OF MISSISSIPPI ON SENTENCING PHASE</u>	
ROXANNE BALLARD	
Direct Examination by Mr. Evans .....	1036
TOM TARDY, III	
Direct Examination by Mr. Horan .....	1038
GLENDA SUE STIDHAM	
Direct Examination by Mr. Evans .....	1043
STATE RESTS ON SENTENCING PHASE .....	1044
<u>WITNESSES: DEFENDANT ON SENTENCING PHASE</u>	
LOLA FLOWERS	
Direct Examination by Mr. Billy Gilmore .....	1044
Cross-Examination by Mr. Evans .....	1048

## TABLE OF CONTENTS - CONTINUED

	<u>Page No.</u>
LOLA FLOWERS (CONTINUED)	
Redirect Examination by Mr. Billy Gilmore .....	1050
ARCHIE FLOWERS	
Direct Examination by Mr. Billy Gilmore .....	1051
ROBERT EARL MERRITT	
Direct Examination by Mr. Billy Gilmore .....	1053
DEFENDANT RESTS ON SENTENCING PHASE .....	1055
BOTH SIDES FINALLY REST .....	1055
Defendant advised of right to testify - JURY OUT .....	1056
Consideration of Instructions on Sentencing Phase - JURY OUT .....	1057
Court Instructs the Jury on Sentencing Phase .....	1078
Final Argument by Mr. Horan .....	1083
Final Argument by Mr. Billy Gilmore .....	1088
Final Argument by Mr. Evans .....	1090
JURY RETIRES TO CONSIDER VERDICT ON SENTENCING PHASE AT 1:35 P.M. ....	1093
JURY KNOCKS AT 2:25 P.M. ON SENTENCING PHASE .....	1093
Clerk reads verdict .....	1094
Jury Polled .....	1095
Court sentences Defendant to death .....	1096
Court Adjourned on 10/17/97 .....	1097
Post Trial Motion Hearing of 11/4/97 .....	1098
Argument on Motion for a Judgment of Acquittal Notwithstanding the Verdict or a New Trial .....	1098
Motion overruled by the Court .....	1107
Discussion of drawing jurors for next trial .....	1107
Motion of State to withdraw exhibits .....	1109
Motion of State to include race and gender of witnesses in Reporter's transcript .....	1110

IN THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

v.

Cause No. CR97-369

(former Montgomery Cause No. 7447)

CURTIS GIOVANNI FLOWERS

\*\*\*\*\*

TRANSCRIPT OF ALL COURT PROCEEDINGS HAD AND DONE IN THE  
PRETRIAL, TRIAL AND POST TRIAL PROCEEDINGS BOTH WHEN THE  
MATTER WAS BEFORE THE CIRCUIT COURT OF MONTGOMERY COUNTY,  
MISSISSIPPI, AND AFTER IT WAS SUBSEQUENTLY TRANSFERRED TO  
LEE COUNTY, MISSISSIPPI; ALL PROCEEDINGS BEING BEFORE THE  
HONORABLE CLARENCE E. MORGAN, III, CIRCUIT JUDGE, FIFTH  
CIRCUIT COURT DISTRICT, AND THE TRIAL OF OCTOBER 13-17,  
1997, BEING BEFORE A JURY OF TWELVE MEN AND WOMEN, DULY  
IMPANELED, IN TUPELO, MISSISSIPPI.

\*\*\*\*\*

APPEARANCES FOR TRIAL:

Present and Representing the State of Mississippi:

HONORABLE DOUG EVANS

District Attorney

HONORABLE KEVIN HORAN

HONORABLE WALTER BLECK

Assistant District Attorneys

P. O. Box 1262

Grenada, Mississippi 38901

**FILED**  
TIME \_\_\_\_\_

DEC 10 1997

JOYCE K. ...  
CIRCUIT CLERK

*Carrie Kelly* D.C.

1 Present and Representing the Defendant:

2 HONORABLE JOHN M. GILMORE

3 Attorney at Law

4 P. O. Box 151

5 Durant, Mississippi 39063

6  
7 HONORABLE BILLY J. GILMORE

8 Attorney at Law

9 P. O. Box 629

10 Lexington, Mississippi 39095

11  
12 Reported By Linda F. Burchfield, C.S.R. #1019

TABLE OF CONTENTS

	<u>Page No.</u>
Style, Number and Appearances for trial itself .....	1
Arraignment on 3/25/97 .....	3
Motion for Discovery on 3/25/97 .....	8
Motion for Change of Venue of 4/28/97 .....	11
Motion of State on 6/6/97 to draw blood of Defendant ..	19
Drawing of Special Venire on 7/1/97 .....	21
Hearing on Defense Motions of 7/1/97 .....	28
Motion to Set Trials .....	28
Motion for Speedy Trials .....	29
Motion to Quash the Indictment .....	30
Motion of Assertion of Right to be Present .....	35
Motion for Process Instructions .....	36
Motion regarding juror questionnaires .....	37
Motion for Compensation of Jurors at Current Wages and for Reimbursement of Primary Care Costs .....	37
Motion to Prohibit Jury Dispersal .....	39
Motion for Additional Peremptory Challenges .....	40
Motion to Invoke the Rule Prior to Voir Dire .....	42
Motion for Individual Voir Dire .....	45
Motion for Opportunity to Rehabilitate any Prospective Juror Who Expresses Reticence When Asked to Kill a Fellow Human Being .....	46
Motion to Set Certain Dates for Each Witness Expected to be Called .....	49
Motion in Limine .....	50
Motion to Exclude .....	58
Motion to Preclude Admission of Gruesome and Highly Prejudicial Color Photographs of Deceased .....	60
Motion to Enjoin Victims' Family from Showing Emotion in the Courtroom While Sitting as Spectators .....	61

## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
Demand for Notice of Aggravating Circumstances and for Disclosure of Evidence Supporting Mitigating Circumstances .....	65
Motion to Adjourn at a Reasonable Time .....	66
Motion for Disclosure of any Possible Basis of Judicial Recusal .....	67
Motion to Preclude the Prosecution from Seeking to Rely on Miss. Ann. Section 99-19-101(7) (b) (c) and (d) ...	68
Renewed Motion for Discovery .....	69
Motion to Control Pretrial Publicity .....	76
Motion to Require the Court Reporter to Transcribe the Entire Proceedings .....	79
Pre-trial Motion Hearing of 9/22/97; objections to excusing of potential jurors requesting dismissal ..	81
Motion of State to consolidate Montgomery County cause numbers 7447 and 7450 .....	89
Court Ruling on State's Motion .....	91
Pre-trial Hearing of 10/1/97; State reverses their former motion to consolidate .....	94
Court Ruling on Motion .....	95
Discussion of exhibits and witnesses for trial .....	97
Pre-trial Hearing of 10/1/97 concluded .....	106
10/13/97 - Motions in Chambers - JURY OUT .....	107
Jury Qualified .....	122
Court gives jurors instructions before noon recess .....	123
Case Called; Parties Announce Ready .....	125
Voir Dire Examination by the Court .....	126
Voir Dire Examination by Mr. Evans .....	196
Voir Dire Examination by Mr. Billy Gilmore .....	210
Further Voir Dire by the Court .....	216
Challenges for Cause - JURY OUT .....	219
Selection of Jury - JURY OUT .....	227

## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
<u>Batson</u> Challenge - JURY OUT .....	233
Jury Called to Box .....	242
Preliminary Matters .....	243
Opening Statement by Mr. Evans .....	245
Opening Statement by Mr. Billy Gilmore .....	249
Limiting Instruction by the Court and overnight instructions to the jury .....	252
Court Recessed for the Day on 10/13/97 .....	256
Court Opened on 10/14/97 .....	257
<u>WITNESSES: STATE OF MISSISSIPPI</u>	
JOHNNY HARGROVE	
Direct Examination by Mr. Horan .....	261
Cross-Examination by Mr. Billy Gilmore .....	272
Redirect Examination by Mr. Horan .....	281
SAM JONES, JR.	
Direct Examination by Mr. Evans .....	282
Cross-Examination by Mr. Billy Gilmore .....	301
BARRY ESKRIDGE	
Direct Examination by Mr. Horan .....	311
Cross-Examination by Mr. Billy Gilmore .....	315
EDDIE ROBINSON, III	
Direct Examination by Mr. Horan .....	317
Cross-Examination by Mr. Billy Gilmore .....	321
MELISSA SCHOENE	
Direct Examination by Mr. Evans .....	323
Noon Recess on 10/14/97 .....	363
Cross-Examination by Mr. Billy Gilmore .....	363
Redirect Examination by Mr. Evans .....	378



## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
Conference in Chambers - JURY OUT .....	383
DR. STEVEN TIMOTHY HAYNE	
Direct Examination by Mr. Horan .....	415
Cross-Examination by Mr. Billy Gilmore .....	429
CHARLES COLLINS	
Direct Examination by Mr. Evans .....	433
Cross-Examination by Mr. Billy Gilmore .....	438
Redirect Examination by Mr. Evans .....	447
FREDERICK VEAL	
Direct Examination by Mr. Evans .....	451
Cross-Examination by Mr. Billy Gilmore .....	461
Redirect Examination by Mr. Evans .....	466
JAMES EDWARD KENNEDY	
Direct Examination by Mr. Horan .....	467
Cross-Examination by Mr. Billy Gilmore .....	470
Redirect Examination by Mr. Horan .....	478
KATHERINE SNOW	
Direct Examination by Mr. Evans .....	479
Cross-Examination by Mr. Billy Gilmore .....	482
MAURICE BERNARD HAWKINS	
Direct Examination by Mr. Evans .....	485
Cross-Examination by Mr. Billy Gilmore .....	486
Redirect Examination by Mr. Evans .....	489
EDWARD McCHRISTIAN	
Direct Examination by Mr. Horan .....	492
Cross-Examination by Mr. Billy Gilmore .....	494
Court gives jury instructions for overnight .....	496

## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
Court Recessed for the Day on 10/14/97 .....	497
Court Reopened on 10/15/97 .....	498
JACK MATTHEWS	
Direct Examination by Mr. Evans .....	498
Cross-Examination by Mr. Billy Gilmore .....	533
Redirect Examination by Mr. Evans .....	544
CLEMMIE FLEMING	
Direct Examination by Mr. Evans .....	547
Cross-Examination by Mr. Billy Gilmore .....	555
Redirect Examination by Mr. Evans .....	561
PATRICIA ANN HOLLMAN	
Direct Examination by Mr. Horan .....	563
Cross-Examination by Mr. Billy Gilmore .....	574
Redirect Examination by Mr. Horan .....	586
ROXANNE MILLER BALLARD	
Direct Examination by Mr. Evans .....	591
Cross-Examination by Mr. Billy Gilmore .....	596
Redirect Examination by Mr. Evans .....	600
Noon Recess on 10/15/97 .....	601
JOE EDWARD ANDREWS, JR.	
Direct Examination by Mr. Evans .....	602
Cross-Examination by Mr. Billy Gilmore .....	618
Redirect Examination by Mr. Evans .....	626
BILL THORNBURG	
Direct Examination by Mr. Horan .....	628
Cross-Examination by Mr. Billy Gilmore .....	633
Bench Conference .....	643

## TABLE OF CONTENTS

Page No.

## STEVE BYRD

Direct Examination by Mr. Horan .....	645
Cross-Examination by Mr. Billy Gilmore .....	649
Redirect Examination by Mr. Horan .....	653

## DOYLE SIMPSON

Direct Examination by Mr. Evans .....	655
Cross-Examination by Mr. Billy Gilmore .....	663
Redirect Examination by Mr. Evans .....	686

## MARY JEANETTE FLEMING

Direct Examination by Mr. Horan .....	689
Cross-Examination by Mr. Billy Gilmore .....	691
Redirect Examination by Mr. Horan .....	696

## CLAUDE DALE ESKRIDGE

Direct Examination by Mr. Evans .....	697
Bench Conference .....	700

## HORACE WAYNE MILLER

Direct Examination by Mr. Horan .....	703
Cross-Examination by Mr. Billy Gilmore .....	705

## JOHN JOHNSON

Direct Examination by Mr. Evans .....	710
Cross Examination by Mr. Billy Gilmore .....	721
Redirect Examination by Mr. Evans .....	729

## STATE OF MISSISSIPPI RESTS ON CASE IN CHIEF .....

732

## Motion for Directed Verdict - JURY OUT .....

732

## Court gives jury instructions for overnight .....

733

## Court Recessed for the Day on 10/15/97 .....

734

## Conference in Chambers on 10/16/97 - JURY OUT .....

735

## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
Court Reopened on 10/16/97 .....	741
<u>WITNESSES: DEFENDANT</u>	
ESSIE RUTH CAMPBELL	
Direct Examination by Mr. Billy Gilmore .....	741
Cross-Examination by Mr. Evans .....	749
Redirect Examination by Mr. Billy Gilmore .....	751
ROY HARRIS	
Direct Examination by Mr. Billy Gilmore .....	752
Cross-Examination by Mr. Horan .....	763
Conference in Chambers - JURY OUT .....	769
CONNIE MOORE	
Direct Examination by Mr. Billy Gilmore .....	782
Cross-Examination by Mr. Evans .....	799
Redirect Examination by Mr. Billy Gilmore .....	809
BILLY JAMES GLOVER	
Direct Examination by Mr. Billy Gilmore .....	813
Cross-Examination by Mr. Horan .....	821
LATOYA HARDING	
Direct Examination by Mr. Billy Gilmore .....	822
Cross-Examination by Mr. Evans .....	827
Redirect Examination by Mr. Billy Gilmore .....	829
EARL CAMPBELL	
Direct Examination by Mr. Billy Gilmore .....	831
Cross-Examination by Mr. Evans .....	835
Redirect Examination by Mr. Billy Gilmore .....	836
KAWILL JONES	
Direct Examination by Mr. Billy Gilmore .....	838

## TABLE OF CONTENTS (CONTINUED)

	<u>Page No.</u>
KAWILL JONES (CONTINUATION)	
Cross Examination by Mr. Evans .....	846
Redirect Examination by Mr. Billy Gilmore .....	848
KITTEY JONES	
Direct Examination by Mr. Billy Gilmore .....	849
Noon Recess on 10/16/97 .....	855
ARCHIE FLOWERS	
Direct Examination by Mr. Billy Gilmore .....	856
Cross-Examination by Mr. Evans .....	859
Redirect Examination by Mr. Billy Gilmore .....	860
MARCUS MOORE	
Direct Examination by Mr. Billy Gilmore .....	861
Cross-Examination by Mr. Evans .....	868
Redirect Examination by Mr. Billy Gilmore .....	870
Conference in Chambers - JURY OUT .....	873
CURTIS GIOVANNI FLOWERS	
Direct Examination by Mr. Billy Gilmore .....	886
Conference in Chambers - JURY OUT .....	926
Cross-Examination by Mr. Evans .....	929
Redirect Examination by Mr. Billy Gilmore .....	954
DEFENDANT RESTS .....	960
<u>WITNESSES: REBUTTAL</u>	
WAYNE MILLER	
Direct Examination by Mr. Horan .....	960
Cross-Examination by Mr. Billy Gilmore .....	961
STATE RESTS ON REBUTTAL .....	963
Consideration of Instructions - JURY OUT .....	964

## TABLE OF CONTENTS - CONTINUED

	<u>Page No.</u>
Court Instructs the Jury .....	987
Final Argument by Mr. Evans .....	994
Final Argument by Mr. Billy Gilmore .....	1004
Final Argument by Mr. Evans .....	1021
Court gives jury instructions not to deliberate yet ...	1026
Trial recessed for the day on 10/16/97 .....	1027
Court reconvened on 10/17/97 .....	1027
JURY RETIRES TO CONSIDER VERDICT AT 8:05 A.M. ....	1028
Bench Conference .....	1029
JURY RETURNS VERDICT AT 9:11 A.M. ....	1031
Verdict: "We, the jury, find the Defendant, Curtis Giovanni Flowers, guilty of capital murder as charged." .....	1032
Jury Polled .....	1032
Conference in Chambers - JURY OUT .....	1034
SENTENCING PHASE - 10/17/97 .....	1035
<u>WITNESSES: STATE OF MISSISSIPPI ON SENTENCING PHASE</u>	
ROXANNE BALLARD	
Direct Examination by Mr. Evans .....	1036
TOM TARDY, III	
Direct Examination by Mr. Horan .....	1038
GLENDA SUE STIDHAM	
Direct Examination by Mr. Evans .....	1043
STATE RESTS ON SENTENCING PHASE .....	1044
<u>WITNESSES: DEFENDANT ON SENTENCING PHASE</u>	
LOLA FLOWERS	
Direct Examination by Mr. Billy Gilmore .....	1044
Cross-Examination by Mr. Evans .....	1048

## TABLE OF CONTENTS - CONTINUED

	<u>Page No.</u>
LOLA FLOWERS (CONTINUED)	
Redirect Examination by Mr. Billy Gilmore .....	1050
ARCHIE FLOWERS	
Direct Examination by Mr. Billy Gilmore .....	1051
ROBERT EARL MERRITT	
Direct Examination by Mr. Billy Gilmore .....	1053
DEFENDANT RESTS ON SENTENCING PHASE .....	1055
BOTH SIDES FINALLY REST .....	1055
Defendant advised of right to testify - JURY OUT .....	1056
Consideration of Instructions on Sentencing Phase - JURY OUT .....	1057
Court Instructs the Jury on Sentencing Phase .....	1078
Final Argument by Mr. Horan .....	1083
Final Argument by Mr. Billy Gilmore .....	1088
Final Argument by Mr. Evans .....	1090
JURY RETIRES TO CONSIDER VERDICT ON SENTENCING PHASE AT 1:35 P.M. ....	1093
JURY KNOCKS AT 2:25 P.M. ON SENTENCING PHASE .....	1093
Clerk reads verdict .....	1094
Jury Polled .....	1095
Court sentences Defendant to death .....	1096
Court Adjourned on 10/17/97 .....	1097
Post Trial Motion Hearing of 11/4/97 .....	1098
Argument on Motion for a Judgment of Acquittal Notwithstanding the Verdict or a New Trial .....	1098
Motion overruled by the Court .....	1107
Discussion of drawing jurors for next trial .....	1107
Motion of State to withdraw exhibits .....	1109
Motion of State to include race and gender of witnesses in Reporter's transcript .....	1110

## TABLE OF CONTENTS - CONTINUED

Page No.

Hearing of November 4, 1997 concluded .....	1113
Post Trial Motion Hearing of 11/14/97 .....	1114
Motion of Defendant to Proceed In Forma Pauperis .....	1114
<u>WITNESSES: CALLED BY DEFENDANT ON MOTION</u>	
CURTIS GIOVANNI FLOWERS	
Examination by the Court .....	1120
Ruling of the Court on Motion .....	1120
Further Motions on Three Remaining Cause Numbers (Not included with the transcript of this cause number) .	1121
End of Transcript .....	1121
Court Reporter's Certificate .....	1122

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	<u>DESCRIPTION</u>
S-1	257	266	Photograph
S-1A	257	271	Corresponding slide
S-2	257	266	Photograph
S-2A	257	271	Slide
S-3	257	266	Photograph
S-3A	257	271	Slide
S-4	257	266	Photograph
S-4A	257	271	Slide
S-5	257		Photograph
S-5A	257		Slide
S-6	257		Photograph
S-6A	257		Slide
S-7	257	355	Photograph
S-7A	257	355	Slide
S-8	257	355	Photograph



## TABLE OF CONTENTS - CONTINUED

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	<u>DESCRIPTION</u>
S-8A	257	355	Slide
S-9	257		Photograph
S-9A	257		Slide
S-10	257		Photograph
S-10A	257		Slide
S-11	257	300	Photograph
S-11A	257	300	Slide
S-12	257		Photograph
S-12A	257		Slide
S-13	257	357	Photograph
S-13A	257	357	Slide
S-14	257		Photograph
S-14A	257		Slide
S-15	257	269	Photograph
S-15A	257	271	Slide
S-16	257	343	Photograph
S-16A	257	343	Slide
S-17	257	269	Photograph
S-17A	257	271	Slide
S-18	257		Photograph
S-18A	257		Slide
S-19	257		Photograph
S-19A	257		Slide
S-20	257	358	Photograph
S-20A	257	358	Slide
S-21	257	343	Photograph
S-21A	257	343	Slide

## TABLE OF CONTENTS - CONTINUED

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	<u>DESCRIPTION</u>
S-22	257		Photograph
S-22A	257		Slide
S-23	257	347	Photograph
S-23A	257	347	Slide
S-24	257		Photograph
S-24A	257		Slide
S-25	257		Photograph
S-25A	257		Slide
S-26	257	349	Photograph
S-26A	257	349	Slide
S-27	257		Photograph
S-27A	257		Slide
S-28	257	347	Photograph
S-28A	257	347	Slide
S-29	257		Photograph
S-29A	257		Slide
S-30	257		Photograph
S-30A	257		Slide
S-31	257		Photograph
S-31A	257		Slide
S-32	257		Photograph
S-32A	257		Slide
S-33	257		Photograph
S-33A	257		Slide
S-34	257		Photograph
S-34A	257		Slide
S-35	257		Photograph

## TABLE OF CONTENTS - CONTINUED

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	<u>DESCRIPTION</u>
S-35A	257		Slide
S-36	257		Photograph
S-36A	257		Slide
S-37	257	526	Photograph
S-37A	257	526	Slide
S-38	257	526	Photograph
S-38A	257	526	Slide
S-39	257	526	Photograph
S-39A	257	526	Slide
S-40	257	526	Photograph
S-40A	257	526	Slide
S-41	257	352	Photograph
S-41A	257	352	Slide
S-42	257	352	Photograph
S-42A	257	352	Slide
S-43	257		Photograph
S-43A	257		Slide
S-44	257		Photograph
S-44A	257		Slide
S-45	257		Photograph
S-45A	257		Slide
S-46	257	352	Photograph
S-46A	257	352	Slide
S-47	257		Photograph
S-47A	257		Slide
S-48	257		Photograph
S-48A	257		Slide
S-49	257	526	Photograph

## TABLE OF CONTENTS - CONTINUED

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	<u>DESCRIPTION</u>
S-49A	257	526	Slide
S-50	257	526	Photograph
S-50A	257	526	Slide
S-51	257	526	Photograph
S-51A	257	526	Slide
S-52	257	526	Photograph
S-52A	257	526	Slide
S-53	257	952	Photograph
S-53A	257		Slide
S-54	257	663	Photograph
S-54A	257		Slide
S-55	257	420	Photograph
S-55A	257	420	Slide
S-56	257		Photograph
S-56A	257		Slide
S-57	257	420	Photograph
S-57A	257	420	Slide
S-58	257	420	Photograph
S-58A	257	420	Slide
S-59	257		Photograph
S-59A	257		Slide
S-60	257		Photograph
S-60A	257		Slide
S-61	257		Photograph
S-61A	257		Slide
S-62	257		Photograph
S-62A	257		Slide
S-63	257		Photograph

## TABLE OF CONTENTS - CONTINUED

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	<u>DESCRIPTION</u>
S-63A	257		Slide
S-64	257		Photograph
S-64A	257		Slide
S-65	257		Photograph
S-65A	257		Slide
S-66	257		Photograph
S-66A	257		Slide
S-67	257		Photograph
S-67A	257		Slide
S-68	257		Photograph
S-68A	257		Slide
S-69	257		Photograph
S-69A	257		Slide
S-70	257		Photograph
S-70A	257		Slide
S-71	257		Photograph
S-71A	257		Slide
S-72	257		Photograph
S-72A	257		Slide
S-73	257	333	Photograph of shoe track
S-74	257	333	Photograph of shoe track
S-75	257	333	Photograph of shoe track (A)
S-76	257	333	Photograph of shoe track (C)
S-77	257	332	Sketch of scene by Schoene
S-77A	257	337	Key for sketch

## TABLE OF CONTENTS - CONTINUED

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	<u>DESCRIPTION</u>
S-78	257		Photo lineup shown to Katherine Snow
S-79	257		Map of downtown area
S-79A	257		Overlay
S-79B	257		Overlay
S-80	257		Map of downtown
S-80A	257		Overlay
S-81	257		Drawing of front of store
S-81A	257		Overlay
S-82	257	329	Drawing of crime scene by Schoene
S-82A	257	329	Overlay
S-83	257	712	Map of larger Winona area
S-83A	257	712	Overlay
S-84	257	524	One small white box containing projectile
S-85	257	530	One brown envelope containing projectile
S-86	257	632	One white envelope containing projectile
S-87	257	529	Gunshot residue kit
S-88	257		Sack that did contain Fila tennis shoe box
S-88A		607	Fila tennis shoe box
S-89	257	521	Fila tennis shoe box with shoes (Substituted for sack)
S-90	257	654	One evidence bag containing projectile in tube

## TABLE OF CONTENTS - CONTINUED

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	<u>DESCRIPTION</u>
S-91	257	654	One evidence bag containing projectile in tube
S-92	257	341	One white box containing projectile (1B)
S-93	257	341	One white box containing projectile (2B)
S-94	257	341	One white box containing projectile (1C)
S-95	257	341	One white box containing projectile (1)
S-96	257	341	One white box containing projectile (2)
S-97	257	341	One white box containing projectile (3)
S-98	257	341	One white box containing projectile (4)
S-99	257	341	One white box containing projectile (5)
S-100	258	341	One white box containing live cartridge (1A)
S-101	258	523	One brown bag containing gray money bag
S-102	258	505	Check dated July 5, '96 for \$82.58 to Curtis Flowers
S-103	258	502	Waiver of Rights dated 7/16/96
S-104	258		Waiver of Rights dated 7/18/96
S-105	258		Waiver of Rights dated 7/23/96

## TABLE OF CONTENTS - CONTINUED

<u>EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>	<u>DESCRIPTION</u>
S-106	258	522	Daily Ledger worksheet dated 7/15/96
S-107	258		Photo lineup shown to Charles Collins
S-108	258		Videotape
S-109	258		Index card of hours worked by C. Flowers
S-110	600	601	Copy of check and index card
D-1	280	727	\$30,000 Reward Flier

EXHIBIT FROM POST TRIAL MOTION HEARING OF 11/14/97

DP-1		1116	Contract with John Gilmore
------	--	------	----------------------------



1 (THE FOLLOWING IS THE ARRAIGNMENT PROCEEDINGS  
2 HAD IN OPEN COURT IN WINONA, MISSISSIPPI, ON MARCH 25,  
3 1997, IN THE ORIGINAL MONTGOMERY COUNTY CAUSE NUMBERS OF  
4 7447-7450 BEFORE THE HONORABLE CLARENCE E. MORGAN, III,  
5 CIRCUIT JUDGE. PRESENT FOR THE STATE OF MISSISSIPPI WERE  
6 HON. DOUG EVANS, HON. CLYDE HILL, AND HON. WALTER BLECK.  
7 PRESENT FOR THE DEFENDANT WERE HON. JOHN GILMORE AND HON.  
8 BILLY GILMORE.)

9 BY THE COURT: Who will you have next?

10 BY MR. EVANS: Do you want to go ahead and do  
11 Flowers, Curtis Flowers?

12 BY THE COURT: Uh-hum.

13 BY MR. EVANS: Curtis Flowers.

14 BY THE COURT: This is cause number 7447, 7448,  
15 7449 and 7450. Hello, Mr. Gilmore.

16 BY MR. GILMORE: Good evening, whatever it is.  
17 I'm not real sure.

18 BY THE COURT: Okay, Defendant is present before  
19 the bench. Mr. Flowers, have you been served a copy of  
20 the indictment in each of these cases?

21 BY THE DEFENDANT: Yes, sir.

22 BY THE COURT: On all four of them?

23 BY THE DEFENDANT: Yes, sir.

24 BY THE COURT: Okay. Mr. Evans.

25 BY MR. EVANS: Yes, Your Honor. In cause number  
26 7447, State of Mississippi versus Curtis Giovanni Flowers,  
27 indictment for the offense of capital murder, Mississippi  
28 Code Annotated Section 97-3-19 (2)(e), the State of  
29 Mississippi, County of Montgomery, in the Circuit Court of

1 Montgomery County, October Term, 1996, Grand Jury recalled  
2 March 20, 1997.

3 The Grand Jurors of the State of Mississippi, taken  
4 from the body of good and lawful citizens of said county,  
5 elected, summoned, empaneled, sworn and charged to inquire  
6 in and for the county aforesaid at the term aforesaid of  
7 the Court aforesaid, in the name and by the authority of  
8 the State of Mississippi, upon their oath present that:  
9 Curtis Giovanni Flowers, late of Montgomery County,  
10 Mississippi, on or about the 16th day of July, 1996, in  
11 the county and state aforesaid and within the jurisdiction  
12 of this Court, alone or while acting in concert with  
13 another or others, did unlawfully, wilfully, feloniously,  
14 and either with or without the deliberate design to effect  
15 death, kill and murder Bertha Tardy, a human being, by  
16 shooting her with a pistol, while engaged in the  
17 commission of the felony crime of armed robbery in  
18 violation of Mississippi Code Annotated Section 97-3-79  
19 and Section 97-3-19(2)(e) as amended against the peace and  
20 dignity of the State of Mississippi.

21 This cause number is endorsed a true bill. It is  
22 signed by the Foreman of the Grand Jury and the District  
23 Attorney. Do you want to go ahead?

24 **BY THE COURT:** Do them all.

25 **BY MR. EVANS:** Cause number 7448, State of  
26 Mississippi versus Curtis Giovanni Flowers, Indictment for  
27 the offense of capital murder, Mississippi Code Annotated  
28 Section 97-3-19(2)(e). The State of Mississippi, County  
29 of Montgomery, in the Circuit Court of Montgomery County,

1           October Term of 1996, Grand Jury recalled March 20, 1997.

2           The Grand Jurors of the State of Mississippi, taken  
3           from the body of good and lawful citizens of said county,  
4           elected, summoned, empaneled, sworn and charged to inquire  
5           in and for the county aforesaid, at the term aforesaid of  
6           the Court aforesaid, in the name and by the authority of  
7           the State of Mississippi, upon their oath present: That  
8           Curtis Giovanni Flowers, late of Montgomery County,  
9           Mississippi, on or about the 16th day of July, 1996, in  
10          the county and state aforesaid and within the jurisdiction  
11          of this Court, alone or while acting in concert with  
12          another or others, did unlawfully, wilfully, feloniously,  
13          and with or without the deliberate design to effect death,  
14          kill and murder Robert L. Golden, a human being, while  
15          shooting him with a pistol, while engaged in the  
16          commission of the felony crime of armed robbery in  
17          violation of Mississippi code Annotated Section 97-3-79  
18          and Section 97-3-19(2)(e) as amended against the peace and  
19          dignity of the State of Mississippi.

20          This cause number is also endorsed a true bill. It  
21          is signed by the Foreman of the Grand Jury and the  
22          District Attorney.

23          7449, the State of Mississippi versus Curtis Giovanni  
24          Flowers, Indictment for the offense of capital murder,  
25          Mississippi Code Annotated Section 97-3-19(2)(e); State of  
26          Mississippi, County of Montgomery; in the Circuit Court of  
27          Montgomery County, October Term, 1996, Grand Jury recalled  
28          March 20, 1997.

29          The Grand Jurors of the State of Mississippi, taken

1 from the body of good and lawful citizens of said county,  
2 elected, summoned, empaneled, sworn, and charged to  
3 inquire in and for the county aforesaid at the term  
4 aforesaid of the Court aforesaid, in the name and by the  
5 authority of the State of Mississippi, upon their oath  
6 present that: Curtis Giovanni Flowers, late of Montgomery  
7 County, Mississippi, on or about the 16th day of July,  
8 1996, in the county and state aforesaid and within the  
9 jurisdiction of this Court, alone or while acting in  
10 concert with another or others, did unlawfully, wilfully,  
11 feloniously, and either with or without the deliberate  
12 design to effect death, kill and murder Carmen Rigby, a  
13 human being, by shooting her with a pistol, while engaged  
14 in the commission of the felony crime of armed robbery in  
15 violation of Mississippi Code Annotated Section 97-3-79  
16 and Section 97-3-19(2)(e) as amended against the peace and  
17 dignity of the State of Mississippi.

18 This cause number is endorsed a true bill. It is  
19 signed by the Foreman of the Grand Jury and the District  
20 Attorney.

21 Cause number 7450, the State of Mississippi versus  
22 Curtis Giovanni Flowers, Indictment for the offense of  
23 capital murder; Mississippi Code Annotated Section  
24 97-3-19(2)(e); the State of Mississippi, County of  
25 Montgomery; in the Circuit Court of Montgomery County,  
26 October Term, 1996, Grand Jury recalled March 20, 1997.

27 The Grand Jurors of the State of Mississippi, taken  
28 from the body of good and lawful citizens of said county,  
29 elected, summoned, empaneled, sworn and charged to inquire

1 in and for the county aforesaid at the term aforesaid of  
2 the Court aforesaid, in the name and by the authority of  
3 the State of Mississippi, upon their oath present that:  
4 Curtis Giovanni Flowers, late of Montgomery County,  
5 Mississippi, on or about the 16th day of July, 1996, in  
6 the county and state aforesaid and within the jurisdiction  
7 of this Court, alone or while acting in concert with  
8 another or others, did unlawfully, wilfully, feloniously,  
9 and either with or without the deliberate design to effect  
10 death, kill and murder Derrick Stewart, a human being, by  
11 shooting him with a pistol while engaged in the commission  
12 of the felony crime of armed robbery in violation of  
13 Mississippi Code Annotated Section 97-3-79 and Section  
14 97-3-19(2)(e) as amended and against the peace and dignity  
15 of the State of Mississippi.

16 This cause number is also endorsed a true bill. It's  
17 signed by the foreman of the Grand Jury and the District  
18 Attorney.

19 BY THE COURT: To each of those charges, how  
20 does he plead - guilty or not guilty?

21 BY THE DEFENDANT: Not guilty.

22 BY THE COURT: On each charge; is that correct?

23 BY MR. BILLY GILMORE: That's correct.

24 BY THE COURT: Mr. Gilmore, the two Mr.  
25 Gilmores, which one of y'all is going to act as lead  
26 counsel in this case?

27 BY MR. JOHN GILMORE: I am, Your Honor.

28 BY THE COURT: All right. My understanding is  
29 y'all have been furnished discovery or will be today?

1 BY MR. EVANS: Will be today, Your Honor.

2 BY MR. JOHN GILMORE: Your Honor, we also have a  
3 prepared motion for discovery and an order prepared.

4 BY THE COURT: Okay. I tell you what let's do  
5 then. I will consider that shortly. Well, let me see it  
6 now.

7 BY MR. JOHN GILMORE: They have the filed copy.  
8 This is a copy.

9 BY THE COURT: Have y'all examined the motion?

10 BY MR. EVANS: No, sir.

11 BY THE COURT: Okay, I'm going to give y'all an  
12 opportunity to look at the Motion. I'm going to set some  
13 deadlines today for reciprocal discovery and motions and  
14 let them examine those, these motions, and then we will  
15 sit down and we will go over some deadlines on what we  
16 have got to do to get the case to trial. Okay?

17 BY MR. JOHN GILMORE: Thank you, Your Honor.

18 BY THE COURT: That is it for now. Y'all don't  
19 leave though because we are going to talk. Mr. Hill, what  
20 is next?

21 (FOLLOWING A RECESS OF THIS MATTER AND WHILE THE  
22 COURT TOOK UP OTHER MATTERS, HEARING ON THE FLOWERS CASE  
23 RESUMED IN OPEN COURT WITH THE DEFENDANT, HIS COUNSEL, AND  
24 COUNSEL FOR THE STATE PRESENT AS FOLLOWS:)

25 BY THE COURT: Mr. Gilmore, you have a motion  
26 for discovery; is that correct?

27 BY MR. JOHN GILMORE: Yes, Your Honor.

28 BY THE COURT: You have furnished that to the  
29 Court at this time?

1 BY MR. JOHN GILMORE: Yes, Your Honor. I  
2 believe you have the original copy.

3 BY THE COURT: All right.

4 BY MR. JOHN GILMORE: The District Attorney also  
5 has a copy.

6 BY THE COURT: Okay, I have examined that  
7 Motion. I'm going to withhold a ruling on that Motion at  
8 this time. My understanding is that the State is going to  
9 give you, furnish you all the discovery required under the  
10 Rules today.

11 BY MR. EVANS: Yes, Your Honor. We have already  
12 given them all the discovery required under Rule 904, and  
13 we are in the process now of going through and showing  
14 them what all is in what we have given them.

15 BY THE COURT: All right. At this time all I  
16 will require them to make available to you is 904  
17 discovery. After you have examined that discovery and  
18 y'all determine that you need further, you can recall this  
19 Motion up again, and then I will consider it at that  
20 time. All right?

21 BY MR. JOHN GILMORE: Yes, Your Honor.

22 BY THE COURT: All right, in light of the fact  
23 that the State is going to furnish discovery today, I'm  
24 going to give, the State is entitled to reciprocal  
25 discovery from the Defendant. I will grant the Defendant  
26 30 days in which to supply that discovery to the State. I  
27 also require that any motion for change of venue or  
28 psychiatric examination be filed within that 30 day  
29 period. After that 30 days has elapsed, then the next 30

1 days any other motions dispositive motions in this case  
2 must be filed. As soon as all the motions are filed and I  
3 have heard those, which will be shortly after that 60 day  
4 period, as short as I can make it, then we will set a  
5 trial date for this case.

6 Anything else I need to do for y'all today?

7 BY MR. JOHN GILMORE: No, Your Honor.

8 BY MR. EVANS: Nothing from the State, Your  
9 Honor. That's all.

10 BY THE COURT: Okay. If the State will provide  
11 an order consistent with my ruling.

12 BY MR. EVANS: Yes, sir.

13 BY THE COURT: All right. Thank you,  
14 gentlemen.

15 HEARING OF MARCH 25, 1997 CONCLUDED  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29



1 (THE FOLLOWING HEARING WAS HELD CONCERNING ALL  
2 FOUR CASES: 7447, 7448, 7449, AND 7450 ON APRIL 28, 1997, IN  
3 CHAMBERS IN WINONA, MISSISSIPPI, BECAUSE THERE WAS A JURY PANEL  
4 OUT IN THE COURTROOM FOR ANOTHER TRIAL. PRESENT FOR THIS  
5 HEARING WERE THE COURT, HON. DOUG EVANS FOR THE STATE, HON.  
6 JOHN GILMORE AND HON. BILLY GILMORE FOR THE DEFENDANT, THE  
7 DEFENDANT HIMSELF, AND THE COURT REPORTER. PROCEEDINGS WERE AS  
8 FOLLOWS:)

9 BY THE COURT: This is cause number 7447, State  
10 of Mississippi versus Curtis Flowers. The Defendant  
11 has filed a motion for change of venue in this  
12 matter. The State has no objection to the venue, and  
13 the Defendant has furnished me an order, and that's  
14 what I am executing right now. You understand all  
15 that, Mr. Flowers?

16 BY DEFENDANT, MR. FLOWERS: Yes, sir.

17 BY THE COURT: Your lawyers have talked to you  
18 about that? Okay. All right. (Court signs Change  
19 of Venue Order.)  
20 This was the deadline on psychiatric examination too,  
21 so I assume y'all are not going to ask for that since  
22 no motion is filed; is that right?

23 BY MR. JOHN GILMORE: That's correct, sir.

24 BY THE COURT: Okay. There is nothing else  
25 pending before this Court until the next deadlines  
26 which are at the end of May. Do y'all want to--

27 BY MR. BILLY GILMORE: --Your Honor, there is  
28 four cases.

29 BY THE COURT: That's right. You are right.

1 Change of venue is granted in each of the cases:  
2 7447, 7448, 7449, and 7450. (Court signs the rest of  
3 the orders.) I told y'all that I would listen to any  
4 suggestions y'all might have about where you wanted  
5 to go, and so that's what I will do at this time.  
6 Mr. Evans? I don't know; y'all may not have any.  
7 Understand, I may or may not do it that way, but if  
8 y'all have got some suggestions, I am willing to  
9 listen to them.

10 BY MR. EVANS: Your Honor, the State has looked  
11 at the Motion for Change of Venue, and as the Court  
12 has already stated, the State did not object for the  
13 reason that I think it is clear that it would have  
14 been impossible to come up with a jury of fair and  
15 impartial people for either side in Montgomery  
16 County. I think one indication of that is the number  
17 of people that showed up at the courthouse here in  
18 Montgomery County for arraignment.

19 As the Court knows and for the record, there are  
20 four separate people that were killed. Even though  
21 they are separate cause numbers, they are all  
22 related. When you look at the number of people that  
23 are friends of or related to each of these victims, I  
24 think it is going to cover a pretty wide area. For  
25 that reason, the State would suggest that the Court  
26 look at a courthouse that is far enough away not to  
27 have the relationships that it would be in the  
28 general area.

29 For that reason, the State would recommend that

1 the Court look at an area either down around Rankin  
2 County or up around Desoto County or somewhere in  
3 that general range. I think both of those would be  
4 courthouses that would be very accessible to the  
5 Court and both sides. I think that is going to be  
6 important, as the Court well knows, that we have  
7 facilities that will accommodate this type of case.  
8 This is probably going to be the largest number of  
9 witnesses that the State has ever put on in a case in  
10 this district. And we are expecting somewhere around  
11 70, 75 witnesses to actually testify in this case. I  
12 think that the facilities of the courthouse are going  
13 to be very important in this particular case. I  
14 think that's all the State has.

15 BY MR. BILLY GILMORE: We haven't picked a  
16 county at this time because I got the impression  
17 before that--

18 BY THE COURT: --You are right. I am going to  
19 do it. I am just, you know, I am willing to let you  
20 have any input that you want to have with the  
21 understanding that the Court will make the ultimate  
22 decision, but I am willing to-- I have in the past  
23 and am now willing to let you make your input. If  
24 you don't have any suggestion one way or another,  
25 that is fine too.

26 BY MR. BILLY GILMORE: Could we maybe reserve  
27 that suggestion until a later date?

28 BY THE COURT: No, I'm going to make this, I'm  
29 going to make this decision this week and have the

1 case moved. I will be able to tell y'all this week  
2 what the county is going to be and where and the  
3 court dates.

4 BY MR. BILLY GILMORE: My thing too, Judge, is  
5 it is at our disadvantage, we need to see about; Mr.  
6 Evans is talking about four different cases, and I  
7 presume he is going to present one of them. And as  
8 early as possible, we need to know which case, and at  
9 this time I think would be a good time for us to  
10 discuss that.

11 BY THE COURT: Well, I believe what I stated; I  
12 believe this is in the record that I said that I will  
13 require them to elect after the last deadline had  
14 passed so that you would know by the first of June  
15 which case that he would proceed on. I anticipate,  
16 gentlemen, and you might as well just be getting your  
17 schedule ready for this right now, that this case  
18 will be set for trial within the first two weeks of  
19 October. So if you have conflicts, you need to be  
20 resolving them right now because this case is going  
21 to take precedence over anything else that you have  
22 got. I am limited, since we are going to have a  
23 change of venue, I am limited by the availability of  
24 dates and courthouses. So I have to give this  
25 priority, and that is far enough ahead of time for  
26 y'all to be-- you should have plenty of time to  
27 prepare plus you ought to have time to readjust your  
28 schedule to fit it.

29 And my understanding, from what we did before,

1 and I will just say this now. Once-- all the  
2 discovery and everything is supposed to be over by  
3 the end of May. So I don't see any reason why we  
4 can't at that point in time designate which case will  
5 be tried first. Isn't that correct, Mr. Evans?

6 BY MR. EVANS: Yes, sir.

7 BY THE COURT: You agreed to that anyhow, I  
8 think.

9 BY MR. EVANS: Yes, sir; we had.

10 BY THE COURT: All right, let the record reflect  
11 this too. At the arraignment of this matter there  
12 were numerous spectators, I would say in excess a  
13 hundred. I do not think that is even indicative of  
14 the number of spectators that there will be when the  
15 trial itself comes. I think the change of venue is  
16 appropriate from the Court's own observations of this  
17 matter. One of the primary concerns is, of course,  
18 to get this place, to a place where there is a fair  
19 and impartial jury that hasn't been tainted by  
20 anything that has gone on in Montgomery County. The  
21 Court will endeavor to move it far enough away where  
22 at least the relationships and acquaintances are not  
23 a factor in this matter.

24 The second most important thing is the  
25 facilities involved. Because of the large number of  
26 people that probably are involved and witnesses, I  
27 think you have told me close to 70 witnesses on the  
28 Defendant's-- I mean on the State's side. We have to  
29 have places where we have adequate places for these

1 people to stay. Obviously, there are going to be  
2 people that come, and I need, it's important that  
3 this be a public trial and people be able to observe  
4 it. So they have to have places to stay. The court  
5 facilities themselves have to be adequate, and that  
6 is the, for security and otherwise, and that is the  
7 considerations that the Court is going to take into  
8 effect.

9 Just for the record, I'm not going into where we  
10 are going to move. One thing, I will tell you about  
11 Rankin County though. I have got personal experience  
12 with that courthouse, and it's not adequate for this  
13 type of case. The security is tenuous at best  
14 because of the way it lays out, and it's just not a  
15 satisfactory facility. The location would be okay,  
16 but the facility is not. So I am probably not going  
17 to do that.

18 Okay, gentlemen, I will let y'all know before  
19 the week is out.

20 BY MR. BILLY GILMORE: Judge, could we within  
21 the next couple of days make a suggestion?

22 BY THE COURT: You can make it--

23 BY MR. BILLY GILMORE: --We are not prepared to  
24 do it today.

25 BY THE COURT: You can make it by tomorrow, but  
26 I'm going to probably made this decision by  
27 Wednesday. There will be an order in the mail by  
28 Wednesday if I have got time to dictate it to my  
29 administrator. So if you want to make it, y'all need

1 to talk about it today and get with me tomorrow.  
2 Have you got any objection to them just telephoning  
3 me and telling me what they want?

4 BY MR. EVANS: No, sir, not at all.

5 BY THE COURT: Okay. I will be glad to hear  
6 from you, but I will set the deadline of tomorrow.

7 BY MR. JOHN GILMORE: Your Honor, Friday I filed  
8 a Renewed Motion for Discovery. There were some  
9 items that we still haven't got that was in the first  
10 discovery motion. There was some more items that I  
11 requested in my renewed discovery motion, and I would  
12 like to get a date set to hear those.

13 BY THE COURT: Have you seen those?

14 BY MR. EVANS: I haven't seen it.

15 BY MR. JOHN GILMORE: I put them in the mail  
16 Friday.

17 BY THE COURT: Okay, well, why don't y'all while  
18 you are here today, discuss those and, Doug, you see  
19 whether or not you think they are within the Rules  
20 and if you can furnish them. If y'all have a  
21 disagreement as to that, then if y'all will  
22 immediately contact me, we will have a hearing on it  
23 next week. That will be fine. Let me make this  
24 suggestion too so that we don't get into a question  
25 about this. Are they giving you a receipt for what  
26 they have received so far?

27 BY MR. EVANS: Everything except the pictures  
28 and I got them to sign off on the discovery for  
29 everything else so that there would be--

1                   **BY THE COURT:** Okay, that's what I would like to  
2 do, and I would require the same of them when y'all  
3 furnish reciprocal so we don't get into quandaries  
4 who did what, and then I will have something in the  
5 record to show who furnished what. Okay?

6                   **BY MR. EVANS:** All right, sir.

7                   **BY THE COURT:** Good deal. Thank y'all.

8                   **END OF HEARING OF APRIL 28, 1997**  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29



1 (THE FOLLOWING MOTION HEARING WAS HELD ON JUNE  
2 6, 1997, IN WINONA, MISSISSIPPI, WITH THE FOLLOWING  
3 PEOPLE PRESENT: HON. DOUG EVANS AND HON. CLYDE HILL  
4 REPRESENTING THE STATE OF MISSISSIPPI; HON. BILLY  
5 GILMORE AND HON. JOHN GILMORE REPRESENTING THE  
6 DEFENDANT CURTIS FLOWERS, WHO WAS ALSO PRESENT.)

7 BY THE COURT: All right, gentlemen, this matter  
8 is before the Court on a Motion of the State to allow them  
9 to draw blood from the Defendant for the purpose of DNA  
10 testing at the Mississippi Crime Lab. Is that correct,  
11 Mr. Evans?

12 BY MR. EVANS: Yes, Your Honor. The State is  
13 prepared to go forward if necessary, but I understand that  
14 the Defense is not going to agree to the Motion but does  
15 not object to it at this point.

16 BY THE COURT: Is that correct?

17 BY MR. JOHN GILMORE: That's correct, Your  
18 Honor.

19 BY THE COURT: Okay. In that event then the  
20 Court is going to order it, and I order that the blood be  
21 drawn. Have you made arrangements for it today?

22 BY MR. EVANS: Yes, sir. We have arrangements  
23 for it to be drawn today and delivered to the State Crime  
24 Lab today. We would further ask that the Court order that  
25 this testing be done at the State Crime Lab.

26 BY THE COURT: That will be the order of the  
27 Court, and we will, just submit me an order to that  
28 effect.

29 BY MR. EVANS: Yes, sir.

1 (Mr. Evans shows order to Counsel opposite, then  
2 hands order to the Court. The Court signs the order.)

3 BY THE COURT: Anything else on this matter,  
4 gentlemen?

5 BY MR. EVANS: Nothing else from the State at  
6 this point, Your Honor.

7 BY MR. JOHN GILMORE: Nothing else from the  
8 Defense, Your Honor.

9 BY THE COURT: The Court is adjourned until we  
10 have hearings on those other motions.

11 BY MR. EVANS: Is the Court going to be here for  
12 a little while?

13 BY THE COURT: Yeah, I'm going to stick around--

14 BY MR. EVANS: We may be able to submit a  
15 questionnaire back to the Court today that we can agree  
16 on.

17 BY THE COURT: Good. That will be fine. Yeah,  
18 I will stay.

19 BY MR. BILLY GILMORE: It's not a whole lot of  
20 difference in the two.

21 BY THE COURT: Okay, I can do that. All right.

22 HEARING OF JUNE 6, 1997 WAS CONCLUDED.  
23  
24  
25  
26  
27  
28  
29

1 COURT CONVENED ON TUESDAY, JULY 1, 1997, AT  
2 APPROXIMATELY 10:10 A.M. IN THE CIRCUIT CLERK'S OFFICE OF  
3 THE LEE COUNTY COURTHOUSE IN TUPELO, MISSISSIPPI, FOR THE  
4 PURPOSE OF DRAWING A SPECIAL VENIRE FOR THE TRIAL SET ON  
5 OCTOBER 13, 1997. THE FOLLOWING PERSONS WERE PRESENT:  
6 THE COURT, JUDGE CLARENCE E. MORGAN, III; HON. DOUG EVANS  
7 AND HON. KEVIN HORAN, REPRESENTING THE STATE OF  
8 MISSISSIPPI; HON. JOHN GILMORE AND HON. BILLY GILMORE,  
9 REPRESENTING THE DEFENDANT; THE DEFENDANT HIMSELF; THE  
10 COURT REPORTER; THE CIRCUIT CLERK, JOYCE LOFTIN, AND  
11 DEPUTY CLERK, CAROL HORTON; AND LAW ENFORCEMENT  
12 OFFICIALS.

13 BY THE CLERK, MS. LOFTIN: We have been having  
14 some come back because of the 911 address changes. To  
15 make sure you have a hundred, I think 350.

16 BY THE COURT: That will work to get it done the  
17 first time. Let me for the record - John, they are going  
18 to draw the jury like we always do, push it in the  
19 computer and draw 350 names. Y'all got any objection to  
20 any of this procedure?

21 BY MR. BILLY GILMORE: What method is the  
22 computer set up on?

23 BY THE CLERK, MS. LOFTIN: It's with Delta, I  
24 think, the same throughout the state. It's the same  
25 computer system.

26 BY THE COURT: It's random selection.

27 BY MS. LOFTIN: They are selected at random. We  
28 have a jury commission that comes in. They put us 10,000  
29 names in a wheel, and then that wheel is put into the

1 computer. An affidavit is signed by the computer people,  
2 comes back to me. That is set aside for the jury  
3 throughout the year. We do this April 1st of each year,  
4 and I have all those papers if you need to see them.

5 BY THE COURT: Any objection?

6 BY MR. BILLY GILMORE: No objection.

7 BY MR. JOHN GILMORE: No.

8 BY THE CLERK, MS. HORTON: We have got it  
9 drawn. We are waiting for it. It won't take but a few  
10 minutes.

11 BY MR. EVANS: Sure beats the old way.

12 BY MS. LOFTIN: Don't it.

13 (OFF THE RECORD WHILE WAITING ON THE COMPUTER TO  
14 DRAW THE NAMES.)

15 BY THE COURT: What Joyce is going to do, we do  
16 a little different than we do at home. When we start the  
17 voir dire, they are-- by the time I come in the courtroom  
18 they are all going to be seated by the way they come on  
19 the list; isn't that right?

20 BY MS. LOFTIN: We don't actually sit them by  
21 the way they come on the list. We let them sit at  
22 random. Then you can take up the excuses and things.  
23 Then when we take up the excuses, we will mark off the  
24 ones we excused in open court. Then we are going to  
25 prepare you a list.

26 BY THE COURT: Of what is left?

27 BY MS. LOFTIN: We will sit them 8 to a row.

28 BY THE COURT: That's the way we do it. Even  
29 when they came in the first time we put them down.

1 BY MS. LOFTIN: No.

2 BY THE COURT: What about the tag with the  
3 number?

4 BY MS. LOFTIN: We don't number them, but we  
5 will get some tags. Are they peel on? What do you use?

6 BY THE COURT: I will have one of my clerks send  
7 you a sample of what we use. I will probably just get  
8 them to send you.

9 BY THE CLERK: If they have got one, you may  
10 want to send us a few. We don't ever put those number  
11 it. After we get the 12 we get them juror tags.

12 BY MR. EVANS: They have the pin on buttons once  
13 they actually get on the jury.

14 BY MR. BILLY GILMORE: None of us are going to  
15 know any of them.

16 BY MS. HORTON: I'm going to go in and print it  
17 now. (Ms. Horton walked into adjacent room where printer  
18 was located.) It's printing now.

19 BY MS. LOFTIN: It's printing it now if you want  
20 to go back there and watch it.

21 (COPIES OF SPECIAL VENIRE WERE DISTRIBUTED TO  
22 COUNSEL. AT THE CONCLUSION OF THE DRAWING OF THE SPECIAL  
23 VENIRE, ALL PARTIES WENT TO THE THIRD FLOOR OF THE  
24 COURTHOUSE FOR A HEARING FIRST IN CHAMBERS AT  
25 APPROXIMATELY 10:30 A.M. ALL COUNSEL NOTED HEREIN FOR  
26 THIS DATE WERE PRESENT AS WELL AS THE DEFENDANT, THE  
27 COURT, AND THE COURT REPORTER.)

28 BY THE COURT: Let the record reflect that the  
29 District Attorney has furnished me with a copy of the jury

1 information questionnaire to be sent out with the jury  
2 summonses in this case. My understanding is that both  
3 sides have agreed to this form. Is that correct?

4 BY MR. JOHN GILMORE: It looks like the one we  
5 agreed to, Your Honor.

6 BY THE COURT: Okay. The Court has examined it,  
7 and the Court has no objection to it. So that will be the  
8 form that will go out with the summonses. Now.

9 BY MR. EVANS: Your Honor, if the Court would  
10 like to keep a copy of it, here is another one you can  
11 give the Clerk.

12 BY THE COURT: Okay, good. We have talked about  
13 this before. Have y'all talked to Ms. Loftin about how  
14 far in advance you want them to go out?

15 BY MR. EVANS: No, sir, not yet.

16 BY THE COURT: She indicated to me they thought  
17 6 weeks was a little long. My experience is probably with  
18 the questionnaire, it is probably not. We may have some  
19 not show up with them getting it that far ahead of time.  
20 I certainly wouldn't want them to go out any less than  
21 four weeks.

22 BY MR. EVANS: Of course, I don't want to go too  
23 long, but I do want to try to have enough time to make  
24 sure we get as many of the questionnaires back as  
25 possible.

26 BY THE COURT: Of course, the most important  
27 thing is that we get the jurors here, so I don't want them  
28 to be far enough out there where we start losing jurors  
29 because of it because apparently they say they need 350 to

1           get a hundred. That is not the greatest return in the  
2           world.

3                   BY MR. EVANS: How long in advance did we send  
4           them out on the Turner case?

5                   BY THE COURT: We sent them about 6 weeks. We  
6           sent them right after the first of January, and the trial  
7           was February the 10th.

8                   BY MR. BILLY GILMORE: What was the turnout on  
9           that?

10                  BY THE COURT: The turnout was okay down there.  
11           Well, wait a minute.

12                  BY MR. EVANS: We had to get some more jurors  
13           because enough of them didn't respond or they couldn't  
14           find them.

15                  BY THE COURT: Right. I don't think there was  
16           that many absent though.

17                  BY MR. EVANS: It wasn't that many absent.

18                  BY THE COURT: It wasn't that many absent; just  
19           on the return. We did not have to do that, I don't  
20           believe, the day when we got down there. About a week--

21                  BY MR. EVANS: --A week ahead of time.

22                  BY THE COURT: A week ahead of time I had to  
23           issue an order ordering more jurors. I don't think -- let  
24           me say this. I think the order, the order that I have  
25           entered drawing these jurors I think only called for 300.  
26           We drew 350 pursuant to my oral instructions to the Clerk  
27           this morning. Does anybody have any objection to that  
28           number being different than what the written order was?

29                  BY MR. EVANS: The State doesn't.

1 BY MR. JOHN GILMORE: No, Your Honor.

2 BY MR. EVANS: What is y'all's feelings on  
3 sending the questionnaires out?

4 BY MR. JOHN GILMORE: The only question I had,  
5 the Judge said he was going to write a letter. I would  
6 like a copy of that as soon as he, the letter to send out  
7 with the questionnaire. Were you going to do that?

8 BY THE COURT: Yeah, you will get a copy of it  
9 before it goes out. I had not prepared it because it's  
10 not near about time for it to go out. I don't anticipate,  
11 I know I'm not going to direct her to send them out until  
12 after Labor Day. That will be about 6 weeks there.

13 BY MR. BILLY GILMORE: I believe in one of the  
14 motions we have a proposed letter from the Judge if you  
15 would like to look.

16 BY THE COURT: I am going to use portions of  
17 that and some out of my own letter, but there are some  
18 things in your letter that I think are appropriate, and  
19 I'm going to use that. We are not going to have any  
20 hearing on what kind of letter I send out. I get to  
21 reserve my right to send out my own letter, but y'all have  
22 some things in there that I'm going to use. And mine says  
23 essentially the same things yours does.

24 BY MR. BILLY GILMORE: Do you think a reminder  
25 to the jurors say ten days prior to the trial would be in  
26 order, or would it be too much problems?

27 BY THE COURT: I don't think we are going to do  
28 that. We will see. If something comes up, I may do  
29 that. If Ms. Loftin calls me and tells me that they are



1           having a problem, then I will address it there. You can  
2           tell; this bunch knows what they are doing up here. So  
3           they will let us know.

4           BY MR. EVANS: Your Honor, I guess as far as the  
5           State, we wouldn't have any problem with 5 or 6 weeks,  
6           either one.

7           BY THE COURT: Okay. Let me look. Y'all got a  
8           calendar?

9           BY MR. EVANS: No.

10          BY THE COURT: I've got one. (Takes calendar  
11          out of his wallet) Labor Day is the 1st of September.  
12          Okay, I'm going to get her to send them out the 8th of  
13          September. That will be 5 weeks.

14          BY THE COURT: I probably will go ahead and  
15          prepare that letter within the next week and direct her  
16          to, and I will send you a copy of it.

17          BY MR. JOHN GILMORE: Thank you, Your Honor.

18          BY THE COURT: And send it on up here. I'm  
19          going to tell her the stuff orally today and follow it up  
20          with a letter in the file as to what to do. Okay.

21          BY MR. EVANS: Just a procedural question: Are  
22          you going to have the Clerk as these questionnaires come  
23          back in, send each of us a copy of them?

24          BY THE COURT: Yeah, if you want that, we will  
25          do that. How about-- I'm not going to have her send them  
26          every day. I will have her send them at the end of the  
27          week. How about that?

28          BY MR. EVANS: (Nods his head).

29          BY THE COURT: Okay.

1 BY MR. EVANS: I can't think of anything else on  
2 the jury right now.

3 BY THE COURT: Okay, I think I have got all the  
4 motions in my stack here, and I have got a list that y'all  
5 sent me. I assume that we will just go down, go down them  
6 one by one. All right.

7 (WHEREUPON, THE COURT, ALL COUNSEL, THE  
8 DEFENDANT AND THE COURT REPORTER WENT INTO OPEN COURT  
9 WHERE COURT WAS DULY OPENED BY THE DEPUTY AND PROCEEDINGS  
10 WERE HELD AS FOLLOWS:)

11 BY THE COURT: All right, gentlemen. I'm going  
12 to go down them one by one, but I'm going to go down them  
13 as set forth on y'all's, the list that you sent me.

14 BY MR. JOHN GILMORE: Do you have a copy of  
15 that, Doug?

16 BY MR. EVANS: Yeah.

17 BY THE COURT: Can y'all hear me?

18 BY MR. BILLY GILMORE: Yes, Your Honor.

19 BY THE COURT: Okay, the first motion is a  
20 Motion to Set Trials. Obviously, we have set them for the  
21 13th of October, and we have set all of them for the same  
22 day. Now the only thing I guess needs to be addressed on  
23 that is for the State to elect as to which case they are  
24 going to try.

25 BY MR. EVANS: All right, Your Honor. Of  
26 course, this Court knows we still have some evidence at  
27 the State Crime Lab. At this point the State would elect  
28 at this point, until we know the results of the lab test,  
29 to first try cause number CR 97-369. Bertha Tardy was the

1 victim. Assuming the lab test makes a difference, then we  
2 would come, ask to come back in and change to, in that  
3 particular case to cause number CR 97-372 where Derrick  
4 Stewart was the victim.

5 BY THE COURT: I think, gentlemen, that is  
6 consistent with what we talked about before. Anything  
7 y'all want to raise in that regard?

8 BY MR. JOHN GILMORE: No, Your Honor.

9 BY THE COURT: Okay. It will then Ms. Tardy,  
10 the case where Ms. Tardy was the victim will be the first  
11 case set unless the DNA analysis changes that in which  
12 case it could be that one. All right. Who is going to  
13 prepare the orders on these? Y'all going to prepare the  
14 orders?

15 BY MR. JOHN GILMORE: Yes, Your Honor.

16 BY THE COURT: Okay. All right, the next one  
17 that you have filed is a Motion for Speedy Trials. What  
18 do y'all want to say on that? Mr. Gilmore.

19 BY MR. JOHN GILMORE: May I proceed, Your  
20 Honor?

21 BY THE COURT: Yes.

22 BY MR. JOHN GILMORE: Your Honor, there is, we  
23 requested a Motion for Speedy Trials because as I  
24 understand it, they are going to elect to try four, the  
25 four cases separately. We just want to make the record  
26 showing that all trials should be tried speedily and  
27 hurriedly so that the Defendant can get a fair hearing as  
28 quickly as possible so that he may be set free as quickly  
29 as possible.

1                   BY THE COURT: All right, the first two -- do  
2                   you have anything, Mr. Evans?

3                   BY MR. EVANS: No, Your Honor. I don't have any  
4                   comment on that.

5                   BY THE COURT: Of course, the first case will be  
6                   tried within six months of the date of indictment. So the  
7                   Motion is sustained that they are entitled to a speedy  
8                   trial, and this Court is going to endeavor to see that  
9                   they are. The first case is set within six months of  
10                  indictment. Depending on the outcome of that, we will  
11                  immediately set the second trial. Upon the outcome of  
12                  that, we will immediately set the third one. I can't do  
13                  it any faster than that because I don't know where we are  
14                  going. I don't know whether we will even be trying all  
15                  of these cases in Lee County. We may have another change  
16                  of venue. It would depend on this Court's docket plus  
17                  the docket in any other venue that we might go to. But I  
18                  do grant the Motion for Speedy Trial and observe that we  
19                  are, they are-- he is, in fact, being provided a speedy  
20                  trial.

21                  I'm going to pass on that one on the gag order for  
22                  now. Let's go on down the list to number 4, Motion to  
23                  Quash Indictment. Let me see if I can find my copy. The  
24                  fact is I think there are two of those. Isn't that right,  
25                  Mr. Gilmore?

26                  BY MR. JOHN GILMORE: Yes, Your Honor. The one  
27                  that we intend on presenting to the Court first, if it's  
28                  permissible with the Court, is the one that states, has  
29                  the 1, 2 and 3 set out. But it matters not which one is

1           heard first.

2                   BY THE COURT: Well, I'm trying to find them in  
3           my copies.

4                   BY MR. EVANS: That's the next one. (Pause)  
5           Your Honor, I believe the one they are wanting to call up  
6           is number 5 on the list. It's headed Motion to Quash  
7           Indictment and has three subparts under it.

8                   BY THE COURT: Okay, that Motion pertains to  
9           cause number 7447. I assume there is one for every, each  
10          one of these causes; is that right?

11                   BY MR. JOHN GILMORE: Yes, sir.

12                   BY THE COURT: Since the State has elected at  
13          this point to proceed on Ms. Tardy's case, let's proceed  
14          in that cause number, 7447. All right. I will hear from  
15          you, Mr. Gilmore.

16                   BY MR. JOHN GILMORE: May I proceed, Your  
17          Honor?

18                   BY THE COURT: You may.

19                   BY MR. JOHN GILMORE: This is a Motion to Quash  
20          the Indictment on the grounds that it fails to set forth  
21          all of the elements required by law for capital murder.  
22          It also should be quashed on the grounds that it fails to  
23          show any indication of an armed robbery. It just alleges  
24          in the indictment that an armed robbery has been  
25          committed. All the indictments are the same. It does not  
26          say who was robbed, what was robbed. It is just  
27          insufficient evidence in the indictment itself to allow  
28          the Defendant to be properly prepared to know what they  
29          intend to show at trial.

1 (Confers with Mr. Billy Gilmore).

2 Like I said, Your Honor, it does not show whether Ms.  
3 Bertha Tardy was robbed, whether the store was robbed, or  
4 if it was someone in one of the other cases that was  
5 robbed. And for that reason, we ask that the indictment  
6 be quashed.

7 BY MR. EVANS: Your Honor, pursuant to our Code  
8 sections, we have followed the Code sections as set forth  
9 that states that we must state what the underlying felony  
10 is. In the indictment it does state that the underlying  
11 felony is armed robbery. Mackbee v. State, 575 So.2d 16,  
12 at pages 34 and 35 states that it's not necessary to set  
13 forth the elements of the underlying felony which elevates  
14 the crime to capital murder. And under Foster v. State,  
15 639 So.2d 1263, at page 1291 our Supreme Court stated that  
16 the underlying felony for the murder was armed robbery and  
17 the underlying indictment needs not set out the elements.

18 But the instructions to the jury do need to define  
19 what elements must be proven. So in this case we have  
20 properly followed the Code sections by stating that this  
21 is a capital murder because it was committed during an  
22 armed robbery. The Code section is attached to the  
23 indictment which specifically advises them of which form  
24 we are proceeding under, and also, according to case law  
25 all that is necessary on the indictment is that we state  
26 what the underlying felony is.

27 Now it will be necessary when the jury is instructed  
28 by the Court to specifically set forth the elements of the  
29 underlying felony.

1                   BY MR. JOHN GILMORE: Your Honor, in order for  
2                   it to be a capital murder as they put forth, it has to be  
3                   a robbery during-- I mean a murder during the course of an  
4                   armed robbery as they have charged. There is no evidence  
5                   indicating that whether the murder was first or the  
6                   robbery was first. In order that the murder be committed  
7                   during the course of the robbery, they are going to have  
8                   to show that such murder was committed during the course  
9                   of the armed robbery. There is no evidence to show  
10                  whether there was a robbery first, second, or if there was  
11                  a robbery at all.

12                 BY THE COURT: Of course, there is no evidence  
13                 at this point, Mr. Gilmore. That will be a matter of  
14                 proof that we will have to tend to through other motions  
15                 depending on what the proof might be. The question now is  
16                 whether he is sufficiently charged under the statute to  
17                 give your client notice of what he is charged with.

18                 BY MR. EVANS: Your Honor, also there are  
19                 numerous cases that state that it does not matter whether  
20                 the robbery or the killing occurred first, and, of course,  
21                 under the Enmund factors, one of the Enmund factors that  
22                 the jury could find was that a killing did take place.  
23                 But there is specific case law that says that it does not  
24                 matter whether the robbery or the killing took place  
25                 first.

26                 BY THE COURT: Well, there again, I think that  
27                 is correct, but there again, those are elements of proof.  
28                 They are subject to motions further in the trial, after  
29                 the trial begins and after we see what the proof is.



1           Okay, on the Motion to Quash the Indictment, this one that  
2           has three parts to it -- let me see something. (Pause)  
3           This is a motion, what is before the Court is a Motion to  
4           Quash the Indictment. There are two motions to quash the  
5           indictment filed in this cause. One of them consists of  
6           three numbered paragraphs. That's the one the Court is  
7           addressing at this point, and that Motion is overruled.

8           All right. What about the other one?

9                       BY MR. JOHN GILMORE: May I proceed, Your  
10          Honor?

11                   BY THE COURT: You may.

12                   BY MR. JOHN GILMORE: Your Honor--

13                   BY THE COURT: --Well, let me say something.  
14          I'm going to designate that. On your list of the motions,  
15          I'm going to designate the one I just ruled on as number  
16          5, all right. All right, you may proceed.

17                   BY MR. JOHN GILMORE: As charged in the  
18          indictment, the Defendant could possibly be sentenced to  
19          death. It is our contentions that the death penalty as  
20          charged and requested violates the Defendant's  
21          constitutional rights against cruel and unusual  
22          punishment. That's all, Your Honor.

23                   BY MR. EVANS: Your Honor, the Enmund factors  
24          must be met, but the United States Supreme Court has ruled  
25          that the death penalty is constitutional. We are getting  
26          into an area now that has long been settled. We do have  
27          specific guidelines that we have to follow which we intend  
28          to.

29                   BY THE COURT: That is the law. The Motion is



1           overruled. Okay, let's see. I see one we can dispose of  
2           real quick: Number 7, Motion for Special Venire. That is  
3           sustained. As a matter of fact, it has been drawn. Is  
4           that correct, gentlemen?

5                     BY MR. JOHN GILMORE: Yes, Your Honor.

6                     BY THE COURT: Rather than looking at my copy, I  
7           think I know what it says. The assertion of the right to  
8           be present is an assertion by the Defendant requesting  
9           that he be present at all crucial points of or stages of  
10          the prosecution?

11                    BY MR. JOHN GILMORE: Yes, Your Honor.

12                    BY THE COURT: Okay. Any objection to that?

13                    BY MR. EVANS: No, sir.

14                    BY THE COURT: That Motion is sustained.

15                    BY MR. HORAN: Your Honor, the only objection  
16          would be that he did ask in the Motion about being present  
17          at the bench conferences. And the law is that he is not  
18          entitled to be--

19                    BY THE COURT: --I rule that he is entitled to  
20          be present in the courtroom. At least at this point in  
21          time he has counsel that he has retained, and they will  
22          represent him until such time as he desires to represent  
23          himself. All right, 6 is sustained.

24                    I tell you what is going to be easier. Mine are not  
25          in order, and they are not in the order of this list. I'm  
26          going to go to them as I have got them in my order. How  
27          about that?

28                    BY MR. EVANS: All right, sir. If you will just  
29          tell us which number you--

1 BY MR. BILLY GILMORE: Your Honor, if you  
2 would like, I have mine numbered. If you would like  
3 to substitute, I will take yours and go through them.

4 BY THE COURT: Okay, that will be fine. Let's  
5 do that.

6 BY MR. JOHN GILMORE: May I approach?

7 BY THE COURT: Uh-hum.

8 BY MR. BILLY GILMORE: Up at the top right hand,  
9 I have numbered them according to the chart.

10 BY THE COURT: Okay, Motion number 8 is a Motion  
11 for me to tell the jury what their duty is. I'm going to  
12 do that, and I assume you have got no objection.

13 BY MR. EVANS: Yes, sir; we do object.

14 BY THE COURT: I'm not going to use their form.  
15 I'm going to use my own.

16 BY MR. EVANS: Okay, we just object to this  
17 particular motion because it has a lot of things that  
18 would be premature and also things that would not be  
19 proper, I think, for the Court to instruct the jury. Now,  
20 I think--

21 BY THE COURT: --Well, of course, I take a lot  
22 of the bulk of this Motion I take as being verbiage and  
23 stuff like that. It's not a request for me to give these  
24 specific instructions that are in this Motion. It's only  
25 a motion for me to instruct the jury as to what their  
26 duties are and how this process works. I'm going to  
27 sustain the Motion as to that. As the wording of it, I  
28 will do that myself. That order needs to reflect the way  
29 I ruled now in that regard.

1 BY MR. JOHN GILMORE: Thank you, Your Honor.

2 BY MR. EVANS: I believe we have already  
3 disposed of number 9 in this morning.

4 BY THE COURT: Yeah. 9 is sustained. 9a has  
5 also been sustained because both parties have submitted  
6 the jury questionnaire to the Court. Neither side had any  
7 objection to the one submitted to the Court, and the Court  
8 has no objection.

9 Okay, number 10. Mr. Gilmore.

10 BY MR. JOHN GILMORE: Yes, Your Honor. May I  
11 proceed?

12 BY THE COURT: Uh-hum.

13 BY MR. JOHN GILMORE: Your Honor, this Motion  
14 requests that the jury be compensated more than the  
15 minimum set by the statute. It also requests that a child  
16 care be provided for the jurors who need it. It is our  
17 contention that the jury cannot sit in the jury box,  
18 listen to the evidence while they are worrying about what  
19 is going on at work, what is happening to their kids.

20 This trial, it's possible to take a week to two  
21 weeks. I know that we are going to try to get it settled  
22 as quickly as possible, but it could go as long as two  
23 weeks. This could provide a hardship on the ones who had  
24 a lower income or one household families or one income  
25 families. If the Court were to at least do the minimum  
26 wage and provide child care, then they wouldn't have to  
27 sit there in the jury box and worry about what is  
28 happening at home, and they can put their full attention  
29 to listening to the facts of this case and giving the

1 Defendant a fair trial.

2 BY THE COURT: What do y'all say?

3 BY MR. EVANS: Your Honor, I think the amounts  
4 the jurors can be paid has already been set in this state,  
5 and I see no way that this would prejudice the Defendant  
6 because I think that the way that juries are set up and  
7 drawn, impaneled in this state already assures that he is  
8 going to have a fair and impartial jury.

9 BY THE COURT: Okay, the jurors, one, are  
10 subjected to voir dire, I mean are subject to voir dire,  
11 and I think that is a question that you can ask them on  
12 voir dire as to whether or not that would affect how they  
13 would rule in this case by the fact that they are going to  
14 be sequestered and then what the cost, how that would  
15 affect. Another thing is one of the excuses for jury  
16 service is whether or not it would be a financial hardship  
17 on the jurors. So a good many of these that may have that  
18 kind of problem may not, may be excused from jury  
19 service.

20 But in any event, everybody that lives in this  
21 country has got some duty to sacrifice something for being  
22 a citizen, and part of it is being on a jury. And that is  
23 just one of those things that people have to do. Another  
24 thing is there is absolutely no authority for me to  
25 authorize this, either case law or by statute.

26 BY MR. JOHN GILMORE: Your Honor, could you  
27 announce before the Court that, before the jury is picked  
28 that this court could last up to two weeks so that they  
29 will--

1                   BY THE COURT: Well, I'm going to send them in  
2                   the letter information that they will be sequestered, and  
3                   I probably may have some reference in there as to how long  
4                   I think it might last. But they will know that they are  
5                   going to have to stay before they get there. So, you  
6                   know.

7                   BY MR. JOHN GILMORE: Your Honor, this also  
8                   would allow the Defendant to have a jury pool that is a  
9                   correct cross section to be picked from, and it would not  
10                  exclude the lower portion of the population, the poorer  
11                  population.

12                 BY THE COURT: Well, they haven't been excluded  
13                 yet. The Motion is overruled. Okay, number 11.

14                 BY MR. JOHN GILMORE: Your Honor, this is a  
15                 pretty self-explanatory motion. It's just that the jurors  
16                 not be allowed to disperse during this trial and not be  
17                 allowed to communicate with other members other than the  
18                 jury and the Court. From what you just said previously in  
19                 the last motion, like I said, I think this Motion is  
20                 pretty self-explanatory.

21                 BY MR. EVANS: Your Honor, I don't have any  
22                 problem with what he argued, but I do have a problem with  
23                 the Motion. This particular Motion the way it's worded  
24                 specifically states that the jury should not be allowed to  
25                 communicate with anyone except the trial Judge. I think  
26                 the Court is going to properly instruct the jury that they  
27                 should not discuss the case with anyone else, but if this  
28                 Motion were read literally as it's worded, it would mean  
29                 that the jury could not talk among themselves about other

1 things other than the case. They could not talk with the  
2 bailiff. They couldn't talk with anyone. And I think the  
3 Court has instructions that pretty well tell or  
4 specifically tell the jury that they are to be kept  
5 together and that they may not discuss the case at any  
6 point until the Judge turns the case over to them. And  
7 also, I know the Court in every case that I can remember  
8 has instructed the jury that if anyone attempts to talk to  
9 them about the case, they are to let the Court know. So I  
10 think what the Court already normally gives the jury is  
11 more proper than what this Motion states.

12 BY MR. JOHN GILMORE: Your Honor, I would amend  
13 the Motion to state what he just said.

14 BY THE COURT: Okay. Here is what I'm going to  
15 do. I sustain the Motion to the extent that you want a  
16 sequestered jury. That is going to be done. I will give  
17 the jury instructions at the beginning of the trial and at  
18 every break that we take concerning who they can talk to  
19 and who they can't talk to and what they can consider and  
20 what they can't consider. I will give normal  
21 instructions. I will also give both counsel opportunity  
22 to add additional instructions at each time that I do that  
23 if they do not think what I have said has been  
24 sufficient. Okay. So to that extent that Motion is  
25 sustained in part.

26 All right, the Motion for Additional Peremptory  
27 Challenges.

28 BY MR. JOHN GILMORE: Your Honor, the  
29 Defendant's life is on the line in this case. There is

1 going to be a long process of the voir dire in which some  
2 of the jury may be predisposed one way or the other  
3 regarding the death penalty. The defense is-- I mean the  
4 prosecution is going to use, I suppose is going to use  
5 their challenges for the ones who are opposed to the death  
6 penalty. I'm not saying that that's what they are going  
7 to do, but we request additional peremptory challenges in  
8 order that we may properly pick a fair and impartial jury  
9 that is not predisposed to automatically send him to the  
10 death penalty-- give him the death penalty if he is found  
11 guilty. That's all.

12 BY MR. EVANS: Your Honor, very briefly, this,  
13 of course, as the Court knows, has been on a change of  
14 venue to a county that is some distance away from  
15 Montgomery County where this cause occurred. There is  
16 nothing in the record that indicates that 12 would not be  
17 a sufficient number of peremptory strikes. Nothing in the  
18 case law says that a Defendant is automatically entitled  
19 to more than 12 strikes in any capital case, and I think  
20 the Court can also reserve its ruling on this until we are  
21 in the middle of voir dire and see if there is any  
22 necessity of this. But at this point I clearly feel that  
23 there is no necessity.

24 BY THE COURT: Okay, at this point in time the  
25 Motion is overruled. The Court reserves the right to  
26 revisit this Motion and its ruling depending on what is  
27 shown in voir dire. It will, however, Mr. Gilmore, be  
28 necessary for you to raise that motion again if you so  
29 desire at that time. If you desire me to, if you continue



1           to desire the additional peremptory challenges, you must  
2           raise that motion again and present it to the Court at  
3           voir dire. If the facts warrant it, then I will grant the  
4           additional peremptory challenges. Okay.

5                       BY MR. JOHN GILMORE: The next motion, Your  
6           Honor, is a Motion to Invoke the Rule Prior to Voir Dire.  
7           A lot of times you have witnesses, possible witnesses who  
8           come in and out of the courtroom during that, during the  
9           voir dire process. In the voir dire process it may be  
10          possible or necessary that either the prosecutor or the  
11          defense has to go into at least some part of the crime,  
12          some elements of the crime in order to pick the jury.

13                      We request that the rule be invoked so that the  
14          witnesses cannot come into the courtroom during the voir  
15          dire process so that they cannot be together talking  
16          amongst themselves about the facts of the case. What we  
17          want to hear from the witness stand is what they actually  
18          know, not what they have heard from the court, from anyone  
19          in the DA's office or the police force. We also request  
20          that the DA's Office and the law officers in this case be  
21          precluded from talking to the witnesses, to coach them,  
22          advise them on what the other witnesses have said.

23                      BY MR. EVANS: Your Honor, the State will agree  
24          that we have the responsibility for not to tell any  
25          witnesses what a prior witness has said. That's as far as  
26          we can agree on this Motion. As to the rule being invoked  
27          prior to voir dire, we have an absolute right to have  
28          anyone that is involved with this case in the courtroom  
29          when the jury is being picked to help us pick the jury.



1           The victims in this case, the families of victims have a  
2           right to be sitting in the courtroom while the jury is  
3           voir dire so that they can have their input as to who is  
4           going to sit on--

5                   **BY THE COURT:** --He didn't ask that they be  
6           excluded, did he?

7                   **BY MR. EVANS:** He is asking for anybody that  
8           might possibly be a witness.

9                   **BY THE COURT:** Well, that doesn't necessarily  
10          include the victims, the victims' families.

11                  **BY MR. EVANS:** Yes, sir; in this case it will.  
12          It will a lot of them. Also, basically what this Motion  
13          is saying is that we can't talk to witnesses. That is not  
14          proper. The only part of this Motion that is proper is  
15          that witnesses not be advised what a prior witness has  
16          testified to. That is what the Rules say.

17                  **BY MR. JOHN GILMORE:** I don't believe that it  
18          says that they can't talk to them specifically. It says  
19          that they can't tell them what other witnesses have said  
20          or other evidence that has come about in their  
21          investigation.

22                  **BY THE COURT:** Okay, of course, under the Rule  
23          he is prohibited already from advising his witnesses what  
24          other witnesses have testified to. That part of the  
25          Motion is sustained. I'm going to sustain the Motion as  
26          to the witnesses on the guilt phase on voir dire, from  
27          being present during voir dire on the guilt phase. Any  
28          witnesses that would be for any sentencing phase would be  
29          admissible-- I mean can attend.

1 BY MR. EVANS: Your Honor, are you saying that  
2 we can't have any of the officers that worked on this case  
3 present in the jury to help us pick the jury and look over  
4 the jury and listen to the answers they give during voir  
5 dire?

6 BY THE COURT: I can't see, I cannot see the  
7 necessity for that. As you pointed out while ago, this  
8 case has been moved on a change of venue. These officers  
9 are not going to know any of these people up here. None  
10 of the witnesses in this case are going to know any  
11 people. So y'all pick the jury on this case, and I don't  
12 see any necessity for that, and I see the potential for  
13 prejudice on the fact that some of the facts are going to  
14 have to be talked to. And I will allow it on the part, on  
15 the sentencing phase because I do not think, I don't think  
16 that whatever you say in voir dire in regards to whether  
17 or not the death penalty would be involved would influence  
18 those persons in any manner. But that is the ruling of  
19 the Court.

20 BY MR. EVANS: Your Honor, if I may, that is  
21 basically saying that there is no sense in us asking jury  
22 questions. Since we are transferred to Lee County, just  
23 pick the first 12 because--

24 BY THE COURT: --Well, that's my ruling, Mr.  
25 Evans. Let's move on.

26 BY MR. JOHN GILMORE: May I proceed, Your  
27 Honor?

28 BY THE COURT: Uh-hum.

29 BY MR. JOHN GILMORE: The next motion is for a

1 motion--

2 BY MR. EVANS: --Your Honor, I hate to  
3 interrupt, but one more thing I would like to bring to the  
4 Court's attention. That is going to eliminate any  
5 security in the courtroom also.

6 BY THE COURT: No, sir. It won't do that. I  
7 will see that we have security. Let's go on.

8 BY MR. JOHN GILMORE: The next motion is a  
9 Motion for Individual Voir Dire. In this case there has  
10 been publicity throughout Montgomery County. I know it  
11 has been in this county as well. I have been contacted  
12 the day that we changed the venue. The phone, I was  
13 contacted--

14 BY THE COURT: --Was this on Motion for  
15 Individual Voir Dire?

16 BY MR. JOHN GILMORE: Right. I have been  
17 contacted by people in this area about hotel  
18 reservations. I know that-- I'm not certain of the extent  
19 of the facts that have been publicized in this area.  
20 Therefore, we ask that there be individual voir dire of  
21 the possible jurors so that we can determine what they  
22 have heard, if anything, from the publicity that has  
23 been. And also the types of the questions that we are  
24 going to ask, if we have individual voir dire or smaller  
25 groups, it will be easier for them to understand the  
26 questions being posed to them.

27 BY THE COURT: Anything else?

28 BY MR. JOHN GILMORE: No, Your Honor.

29 BY THE COURT: What says the State?

1                   BY MR. EVANS: Your Honor, I think this is  
2 premature at this time. I think this is something the  
3 Court would have to rule on as we went, but I don't see  
4 any need for it at this time.

5                   BY THE COURT: The voir dire will be conducted  
6 as it generally is where the questions are directed to the  
7 panel as a whole, and then depending on the responses, you  
8 have a right to ask particularly the jurors those  
9 questions. As to any individual voir dire particularly,  
10 it depends on what their responses to the questions are.  
11 The Motion is overruled at this point. I reserve the  
12 right to revisit my ruling depending on what the responses  
13 of the jurors are.

14                  BY MR. JOHN GILMORE: Your Honor, may we request  
15 that instead of the entire 350 or however many is left  
16 after the qualification process, that they be broken down  
17 into smaller groups?

18                  BY THE COURT: No, sir. We are going to do it  
19 as a whole.

20                  BY MR. JOHN GILMORE: May I proceed on the next  
21 motion?

22                  BY THE COURT: Uh-hum.

23                  BY MR. JOHN GILMORE: The next Motion is for  
24 Opportunity to Rehabilitate any Prospective Juror who  
25 expresses some sort of hesitancy to put my client to death  
26 during the sentencing phase. We ask that they not be  
27 automatically, be disqualified and that we be entitled to  
28 ask further questions in order that they may understand  
29 exactly what is posed to them.

1 BY MR. EVANS: Your Honor, I think both sides  
2 clearly have a right to attempt to rehabilitate any juror.

3 BY THE COURT: Sustained.

4 16 has already been sustained. I say, I'm looking at  
5 just the heading of it. There is nothing in there,  
6 nothing sinister in that, is it? (No response) Okay,  
7 the jury will be sequestered, not prior to the trial, not  
8 prior to voir dire or during voir dire. They will be  
9 sequestered-- after the jury has been selected, the jury  
10 will be sequestered.

11 BY MR. JOHN GILMORE: Well, I think the reason  
12 we asked for it prior to would be so that as I have seen  
13 it in a lot of courtrooms, the jury will be sitting out in  
14 the audience. Witnesses will be coming in and out. There  
15 will be a possibility that witnesses could be talking with  
16 the jury. We just ask that they be kept separate from any  
17 of the witnesses.

18 BY THE COURT: The procedure will be when we  
19 meet here, of course, I won't know who they will be until  
20 we get here. Other than, I mean I don't know who is a  
21 juror and who is not other than what is on that list. We  
22 are going to call them, and they will all be seated on one  
23 side of the courtroom, and they will be seated separately  
24 from anybody else in the courtroom. I will then go  
25 through the process of determining who is qualified to be  
26 a juror and who has some legitimate excuses why they  
27 cannot serve as jurors. When we get those people  
28 released, then we will be down-- then we will take about  
29 30 minutes-- well, it may take longer than that. It may

1 take 30 minutes to an hour to get us a jury list. At that  
2 point in time the Court is going to instruct them that  
3 they cannot discuss this matter with anybody or allow  
4 anybody to discuss it with them.

5 They will come back and then be seated in order, and  
6 they will be separated from other people. But as far as  
7 me placing them in a room alone by themselves during that  
8 period of time, I'm not going to do that. After voir  
9 dire, the jury will then be sequestered, and they will be  
10 kept separated.

11 BY MR. JOHN GILMORE: Would it be possible, Your  
12 Honor, for them to report to a certain location with the  
13 clerk and the clerk tell them where to go so they just  
14 won't be wandering the halls talking?

15 BY THE COURT: No, I'm not going to do that.  
16 You have a right to question them on voir dire as to  
17 whether they have talked to anybody about this case.

18 BY MR. EVANS: Your Honor, also there is a few  
19 other things in this Motion that the Court may want to  
20 reserve its ruling on. Specifically, comments in the  
21 Motion about the jury not being able to talk to their  
22 family. I know in previous cases that this Court has  
23 allowed jurors in the presence of a bailiff to call their  
24 family for certain reasons. As far as actually sustaining  
25 this at this point, it may be a little bit premature.

26 BY THE COURT: Well, I'm going to allow, what is  
27 going to happen, as soon as we get the jury picked, in the  
28 presence of a bailiff I'm going to allow those jurors to  
29 make a phone call home to tell the person, their family

1           that they are not going to be there for a while, and that  
2           will be the extent of their contact with any other family  
3           members or anybody else barring an emergency where they  
4           have somebody die or something like that. I can't rule on  
5           those things until they happen. But once they have made  
6           the initial communication or we make some communication  
7           with their family so they will know where they are and  
8           know they are not coming home for a while, then there will  
9           be no further communications. There again though, you  
10          know, I reserve the right to modify that depending on what  
11          the facts are at the time.

12                       BY MR. JOHN GILMORE: I have no objections to  
13          what you just said.

14                       BY THE COURT: Okay. 17.

15                       BY MR. JOHN GILMORE: Your Honor, as I indicated  
16          before, this trial could take up to two weeks. On the  
17          prosecution witness list now there are 70 or more  
18          witnesses. The defense intends on recalling some of those  
19          witnesses, intends on calling some of its own. From  
20          talking with the DA's Office earlier, they don't intend on  
21          calling all of those witnesses, but it would be beneficial  
22          to the Court and to, I would assume the DA's Office as  
23          well as our office, that there be set a certain number of  
24          witnesses or a certain number of witnesses and days that  
25          those witnesses will be heard. Say so many witnesses one  
26          day and they know who they will be. They let us know; we  
27          let them know who our witnesses are going to be for the  
28          certain days.

29                       BY THE COURT: I will say this, Mr. Gilmore. If



1           this was California and I had six months to try this case,  
2           I might be more inclined to grant that Motion. But I will  
3           hear from the State if you want to be heard. I think you  
4           probably know how I'm going to rule on this.

5                     BY MR. EVANS: I don't wish to be heard on this  
6           one, Your Honor.

7                     BY THE COURT: Okay. That Motion is overruled.

8                     BY MR. JOHN GILMORE: There are several Motions  
9           in Limine, Your Honor. The first Motion in Limine that I  
10          propose is going to be the one that prohibits the State  
11          from referring to any prior convictions or alleged  
12          criminal activity of the Defendant which has not been  
13          charged in the indictment pending against him. In view of  
14          that, we specifically request since the State has chosen  
15          to proceed with four separate trials, and since Ms.  
16          Tardy's has been set for the first one, unless DNA  
17          evidence on the other one, we request that they only be  
18          allowed to make reference to the specific evidence dealing  
19          with Ms. Tardy, the specific evidence only with this crime  
20          against Ms. Tardy; make no references to any other  
21          victims, any other evidence dealing with the other  
22          victims. They have chosen to proceed with four separate  
23          indictments, and I think we should follow what they have  
24          set up and only go with the proof for each victim of the  
25          crimes.

26                    BY THE COURT: Okay, well, now you have got, you  
27          raised two things in here. Don't you have a separate  
28          motion on that? One is the, you asked to make a 609  
29          ruling now.



1                   BY MR. HORAN: Your Honor, Motion 18 says  
2                   alleged criminal activity which takes it outside of 609,  
3                   and he does in Motion 19 have a--

4                   **BY THE COURT:** --Mine is not numbered, so you  
5                   have got me at a disadvantage. The one I am looking at  
6                   first says it's a Motion in Limine to prohibit the State  
7                   from referring during the presentation of its case to any  
8                   prior convictions. That would be a 609, or alleged  
9                   criminal activity of the Defendant. That would be 609  
10                  too, wouldn't it? I can't make those rulings. I can't  
11                  make those rulings until such time as we see the proof. I  
12                  mean they have a way to make that relevant evidence, and  
13                  if it becomes it, then I have to rule at that time. I  
14                  can't rule-- it's premature is what I'm saying in that  
15                  regard on prior convictions or prior wrong acts or stuff  
16                  like that.

17                  BY MR. JOHN GILMORE: Your Honor, we ask that  
18                  you would limit what they are allowed to bring in from the  
19                  other cases and the other victims.

20                  **BY THE COURT:** Okay, but that's what I am  
21                  saying. You have raised two motions at once. Don't you  
22                  have a separate motion -- this one that I'm looking at  
23                  does not particularly address that.

24                  BY MR. JOHN GILMORE: Well, they are, as I'm  
25                  saying--

26                  **BY THE COURT:** --I'm trying to get it in order  
27                  for the record is what I'm looking at.

28                  BY MR. JOHN GILMORE: This Motion requests that  
29                  they not bring forth any evidence other than that charged

1 in the specific indictment. And the indictment for Ms.  
2 Tardy, we request that only evidence dealing with Ms.  
3 Tardy be brought up. We don't want any pictures showing  
4 all the other victims.

5 BY MR. EVANS: That is 19. I guess we have  
6 skipped 18 to 19, Your Honor.

7 BY THE COURT: Okay, what do y'all-- somebody  
8 read 18 to me so I can mark it on mine.

9 BY MR. EVANS: Show him which one you have got.

10 BY MR. JOHN GILMORE: I think I might have had  
11 two of these. I'm not sure if I--

12 BY MR. EVANS: --That's different from this one.

13 BY MR. JOHN GILMORE: Your Honor, the wording is  
14 the same in a couple of these.

15 BY THE COURT: Yeah, I noticed.

16 BY MR. JOHN GILMORE: But this is-- and I  
17 apologize to the Court for presenting two of the same  
18 motion, but they are as far as I know verbatim. They  
19 just--

20 BY THE COURT: Okay. Well, I want us to have a  
21 record of having done all this. So let's see.

22 BY MR. EVANS: That is number 22 on the list, I  
23 believe.

24 BY THE COURT: Are 18 and 22 the same?

25 BY MR. EVANS: They are worded a little  
26 different.

27 BY MR. BILLY GILMORE: Your Honor, having  
28 reviewed your copy that you received, I'm not sure you had  
29 all five of the Motions in Limine. I don't see but, it

1 looks like three of them here so--

2 BY THE COURT: Okay. Well, I have got some up  
3 here.

4 BY MR. BILLY GILMORE: All right. You were  
5 supposed to--

6 BY THE COURT: I have got them.

7 BY MR. BILLY GILMORE: You were supposed to have  
8 them, but I don't see them in the stack you gave me.

9 BY THE COURT: Okay, don't 18 and 22 say the  
10 same thing? I realize they are a little different  
11 wording, but isn't it the same motion?

12 BY MR. HORAN: Yes, sir. 22 goes about the  
13 prior convictions, does it not?

14 BY THE COURT: Well, both of mine do.

15 BY MR. JOHN GILMORE: Both of them do.

16 BY MR. HORAN: Then 18 is... (trails off).

17 BY MR. JOHN GILMORE: I think they are basically  
18 word for word verbatim. They were just printed on  
19 different copiers, and it changed the format a little.  
20 But I would withdraw the Motion 22 as they said, the one  
21 that--

22 BY THE COURT: Okay, 22 is withdrawn.

23 BY MR. JOHN GILMORE: What we intend, intended  
24 by this is any prior convictions or any other illegal  
25 activity not specifically charged in the specific  
26 indictment in this case, in Bertha Tardy's case only; only  
27 evidence of the Bertha Tardy capital murder by armed  
28 robbery.

29 BY THE COURT: Okay, I know what you are getting

1           at. Let me make this ruling on part of the Motion right  
2           now. Part of it about the prior convictions is a ruling  
3           that would have to be made at such time as we get into the  
4           trial depending on what the evidence is. They may or may  
5           not be able to get that in depending on how, what they  
6           want to offer it for. All right, what you are really  
7           getting at though is that you want to prohibit them from  
8           discussing these other alleged crimes that occurred at or  
9           about the same time; is that right?

10                   BY MR. JOHN GILMORE: Yes, Your Honor.

11                   BY THE COURT: All right, what says the State?

12                   BY MR. EVANS: Your Honor, to start with, I  
13           think the case law is clear that we have the right to  
14           elect whether to try them all together or separately. I  
15           think the case law is also clear that where it is  
16           necessary to show an entire picture of what occurred and  
17           show necessary facts that would have to be proven, we are  
18           entitled to go into showing that four different people  
19           were shot and killed there. I think it is going to be  
20           necessary. There is going to be, I expect, some defense  
21           in this case as to how many folks may have been involved.  
22           I think it is going to be necessary to show that all of  
23           these individuals were shot in the same general area.  
24           They were all shot with the same caliber gun.

25                   It is going to be necessary that we show there are  
26           going to be some bloody tennis shoe tracks. I think it is  
27           going to be necessary to show that there was blood of  
28           different individuals in that area. It is also several  
29           different factors that it is going to be necessary to show

1 the different locations and in what was going on.

2 Also, this is a business. We are talking about  
3 early morning hours. It is going to be necessary to  
4 explain why there was no one else in the store that could  
5 testify because everyone that was located in the store  
6 was, in fact, killed. The testimony is going to show who  
7 was there at that time, and we have got to explain why  
8 those individuals are not present.

9 Also, there were statements made by the Defendant in  
10 jail to another inmate that states there were some reasons  
11 why some of these individuals were killed. It is going to  
12 be necessary to explain how these individuals were killed  
13 and show these things to explain the statements that the  
14 Defendant has made also.

15 Now there is a long line. I think this is one of  
16 those that as far as specific things that we go into, the  
17 Court may have to rule as we are going in the trial. But  
18 as far as the general motion, I think it is clear that we  
19 are entitled to show a complete picture to the jury.

20 BY MR. JOHN GILMORE: Your Honor, as he stated,  
21 he had the right to select. It was his choice to proceed  
22 with four separate indictments on four separate trials and  
23 four separate counts. It would be highly prejudicial to  
24 bring forth evidence of another crime not being charged in  
25 the indictment. He chose to do it this way, and we are  
26 just requesting that evidence of any other alleged  
27 criminal activity other than specifically charged in the  
28 indictment be prohibited.

29 BY THE COURT: Okay, that Motion is overruled.

1           My copies are out of order again. You will have to  
2           tell me what the next motion is.

3           BY MR. JOHN GILMORE: The next motion I have is  
4           prohibiting the State or any of its witnesses from making  
5           a reference to the Defendant having stolen any gun.

6           BY MR. BILLY GILMORE: Your Honor, it's two  
7           motions dealing with a gun. If you want to look at both  
8           of those, they have a different text, but they both refer  
9           to a stolen gun.

10          BY THE COURT: Okay, the first one is just any  
11          reference by any witness to a gun being stolen.

12          BY MR. JOHN GILMORE: Well, the first one is any  
13          reference of my client having stolen a gun until it is  
14          proven that any said stolen gun was used in the commission  
15          of this crime or who stole it or that my client stole it  
16          or that it was ever actually stolen. That would also be  
17          making reference to any other illegal activity not charged  
18          in the indictment. He is not charged with stealing  
19          anyone's gun. We request that the State be prohibited  
20          from making any reference to my client had stolen a gun  
21          until it is proved that the alleged stolen gun is relevant  
22          in this case.

23          BY MR. EVANS: Is that all?

24          BY MR. JOHN GILMORE: On this motion.

25          BY MR. EVANS: All right, Your Honor, in  
26          response to this, so that the Court will kind of  
27          understand where we are going, because just looking at  
28          this, the Court may be a little confused of where we are  
29          going. We expect the State will prove in this case that

1 at approximately the time of the murders that an  
2 individual reported his gun stolen out of a car, an  
3 individual that was related to the Defendant. We are  
4 going to be able to prove by eye witness testimony that at  
5 approximately the time the murder weapon that was used in  
6 this case was stolen out of that car that this Defendant  
7 was seen leaning against the car that the gun was stolen  
8 out of. So it is definitely going to be relevant. We are  
9 going to be able to prove that the gun that came out of  
10 that car is the murder weapon. And we can put the  
11 Defendant in the vicinity of that car at the time. So I  
12 think that it definitely going to be relevant testimony  
13 that the jury would have to hear.

14 BY MR. JOHN GILMORE: Well, Your Honor, we are  
15 not asking that they be precluded from putting on evidence  
16 of the gun. We are asking that they not make any  
17 reference to my client had stolen the gun until it is  
18 proved that that is--

19 BY THE COURT: It is an order of proof  
20 objection. I can't rule on that until we get into the  
21 order of proof. So I overrule the Motion in Limine. You  
22 can raise that objection at the appropriate time. That  
23 was 19?

24 BY MR. HORAN: 20 and 21.

25 BY MR. JOHN GILMORE: The next motion--

26 BY THE COURT: 20. What did we do with 19?

27 BY MR. HORAN: That was the 404(b) motion. 18  
28 and 19 were 404(b) motions.

29 BY THE COURT: Right.



1 BY MR. HORAN: That's the way they read.

2 BY THE COURT: That's right.

3 BY MR. JOHN GILMORE: The next motion that I--

4 BY MR. BILLY GILMORE: --Did we agree that is 19  
5 or 20?

6 BY THE COURT: It's not 609, is it?

7 BY MR. BILLY GILMORE: Is that 19?

8 BY THE COURT: Yeah. 19 is overruled.

9 BY MR. JOHN GILMORE: The next motion is also  
10 dealing with the gun. I suspect that you are going to say  
11 that it's an order of proof also.

12 BY THE COURT: Yes. Of course, you know, if  
13 it's not relevant, it's not coming in. But if they make  
14 that relevant, then it is.

15 BY MR. JOHN GILMORE: With having 22 withdrawn,  
16 the last Motion in Limine would be that the Court prohibit  
17 the State from, and its witnesses from making any  
18 reference to allegations or showing any pictures images,  
19 videos, diagrams or any other evidence of any crime not  
20 charged in the indictment.

21 BY MR. EVANS: I thought we had already covered  
22 all that.

23 BY MR. JOHN GILMORE: Well, it's a separate  
24 motion.

25 BY THE COURT: It's the same ruling as I made on  
26 the other one.

27 BY MR. JOHN GILMORE: The next motion is a  
28 Motion to Exclude. We ask that the Court issue an order  
29 excluding any evidence or testimony with reference to any



1 projectile casings or ballistic reports without first  
2 proving and/or producing the gun that said projectiles  
3 were fired from and said casings were ejected from.

4 **BY THE COURT:** There again, that is an order of  
5 proof objection. If they don't offer the gun, obviously,  
6 they can't-- well, I'm not even going to say that. It  
7 just depends on what the proof is as to how I rule on  
8 that. Obviously, by having, if they admit the gun, it is  
9 going to be more relevant than if they don't. But I'm  
10 going to make those determinations at trial, and you will  
11 just be required -- I overrule the Motion to Exclude, and  
12 you will have to make those objections at trial.

13 **BY MR. JOHN GILMORE:** The next motion is a  
14 Motion to Preclude the law enforcement officers from  
15 bringing the client before the jury into the courtroom in  
16 shackles.

17 **BY THE COURT:** That Motion is sustained to this  
18 extent. Providing there remains order and decorum in the  
19 courtroom, your client will be permitted to attend all the  
20 hearings and whatever without shackles or any restraints  
21 whatsoever. As to the number of uniformed officers in the  
22 courtroom, I will not have an overabundance of them, but I  
23 am going to have sufficient amount to provide proper  
24 security, and I will determine that at the time we go to  
25 trial.

26 **BY MR. JOHN GILMORE:** We ask that some of them  
27 be undercover, plain clothes.

28 **BY THE COURT:** I will make those determinations  
29 at that time. It depends on the facts I am presented with

1 at that time.

2 BY MR. JOHN GILMORE: Thank you, Your Honor.  
3 The next motion is a Motion to Preclude Admission of  
4 Gruesome and Highly Prejudicial Color Photographs of the  
5 Deceased. That Motion is pretty self-explanatory.

6 BY THE COURT: Okay.

7 BY MR. BILLY GILMORE: I believe he skipped one,  
8 Your Honor, if you want to try to keep them in order.

9 BY MR. JOHN GILMORE: Do you want me to back up  
10 and do the other motion, or do you want me to just go  
11 ahead?

12 BY THE COURT: Well, you can do the one you are  
13 on.

14 BY MR. JOHN GILMORE: Well, Your Honor, we just  
15 ask that we be required to, allowed to review the pictures  
16 before time in order that highly prejudicial and gruesome  
17 pictures be kept out. If such pictures are brought in,  
18 it's going to highly inflame the jury, and they are going  
19 to have that on their minds rather than all of the facts  
20 of the case.

21 BY THE COURT: Well, of course, highly  
22 inflammatory pictures would not be admissible just, if  
23 they are prejudicial to the jury, but you have to make,  
24 you are going to have to make that objection when the  
25 State attempts, intends to present them. I will have to  
26 see what the proof is, and you will have to object at that  
27 time, and we will have a 403 hearing then, 404 hearing.

28 BY MR. JOHN GILMORE: In order so that the State  
29 may have adequate time, we also request that either

1 diagrams or black and white photos be used instead of the  
2 color photos.

3 BY THE COURT: Now what?

4 BY MR. JOHN GILMORE: We ask that either  
5 diagrams or black and white photos be used rather than  
6 color photos.

7 BY THE COURT: That Motion is overruled.

8 BY MR. JOHN GILMORE: I'm going to back up and  
9 get the other motion. It's a Motion to Enjoin the  
10 Victims' Families from Showing Emotion while sitting as  
11 spectators. We ask that they, they are being good here  
12 today. We ask that this be maintained, that during some  
13 of the evidence that comes out, we just ask that restraint  
14 be asked of them and ordered of the family and friends  
15 sitting as spectators. And we also request that any type  
16 of ribbons or anything like that be prohibited in the  
17 courtroom.

18 BY THE COURT: What says the State?

19 BY MR. EVANS: Sir? As far as ribbons, I think  
20 there clearly has to be some showing of prejudice to the  
21 Defendant before it would be a proper motion. I see no  
22 prejudice that that could have to the Defendant. As far  
23 as the motion for the victims' families not to show  
24 emotion, I think all of the folks that will be in the  
25 courtroom in this case are going to understand that they  
26 are not to make any outbursts. But as far as emotion,  
27 emotion can come from the stand or anywhere else in the  
28 courtroom, and I think that is something that is hard to  
29 say well, you can't have any emotion in the courtroom.

1 But as far as outbursts, I have already and I am sure the  
2 Court is going to advise everyone in the courtroom from  
3 both sides not to have any outbursts.

4 BY MR. JOHN GILMORE: Well, Your Honor, there is  
5 a difference between outbursts and other statements made.  
6 I have heard several this morning already, and whether the  
7 Judge can hear them or not, the jury is usually seated a  
8 little bit closer, and they can hear things that the Judge  
9 or possibly the lawyers may not even hear.

10 BY THE COURT: Okay. Of course, I anticipated  
11 having to address this issue at one point or another. I'm  
12 going to address it again when we have, when we have the  
13 jury selected and when we begin this trial. It's my job  
14 and I am required by the law in this state and in this  
15 country to provide a fair and impartial trial for both  
16 sides in this case, and that's what I'm going to do. I am  
17 not going to allow unnecessary displays of emotion by  
18 either side, either for the victim's side or for the  
19 people who will be here on the Defendant's side in this  
20 case. We are going to maintain decorum in the courtroom,  
21 and those that cannot abide by that will have to be  
22 removed from the courtroom.

23 When we get through with this trial, we are going to  
24 have a fair and impartial trial in this case for this  
25 Defendant and for the State of Mississippi. To that end,  
26 I am going to maintain order, and I will not allow any, I  
27 understand the emotional issues and the fact of some of  
28 these things where people may cry or something like that,  
29 but in responses to the, to questions asked by either side

1 in this case or answers given by the Defendant, I'm going  
2 to instruct and request that all members of the audience  
3 of this case let the case be tried by the lawyers from the  
4 witness stand and let the jury make the decision in this  
5 case. And to that end I'm going to see, to the best of my  
6 ability I'm going to see that that is done. I'm going to  
7 make this statement again, and we are going to discuss  
8 this more when we get a jury selected in this case and  
9 when we try it.

10 As to the question about the ribbons, I'm going to  
11 reserve my ruling on that, and I will determine that at  
12 the time, at the time of the trial.

13 BY MR. JOHN GILMORE: Thank you, Your Honor.  
14 Skipping ahead since we had already covered the previous,  
15 the next motion, I'm going to skip to the Motion to Bar  
16 Admission of Inflammatory and Prejudicial Matters  
17 Concerning the Victim. We don't intend on attacking, at  
18 least at this point we don't intend on attacking any of  
19 the characteristics of any of the victims. We request  
20 that the State be prohibited from referring to any  
21 characteristics of the victim which would tend to sway the  
22 jury before all the evidence is heard.

23 BY THE COURT: Okay, I will sustain that to the  
24 extent that it is within the Rules. Anything allowed by  
25 the Rules I'm going to allow in. So you will need to make  
26 that objection at the time the question is asked.

27 BY MR. EVANS: Your Honor, also, if we may, part  
28 of this Motion is to prohibit any victim impact. I do  
29 think we need to go ahead and clear that part of the

1 Motion up at this point too because we need to make sure  
2 that we furnish all witnesses on that phase also. And  
3 just in response to that part, I think the case law is  
4 clear now pursuant to Hansen v. State, 592 So.2d 114 and  
5 also Payne v. Tennessee stating that victim impact is  
6 appropriate and that the jury does have a right to see  
7 what impact these deaths have on the immediate family as  
8 to make their decision as to whether death is an  
9 appropriate penalty.

10 BY MR. JOHN GILMORE: Your Honor, that is going  
11 to be more along in the sentencing phase. We are more  
12 talking about the guilt or innocence phase.

13 BY MR. EVANS: The main reason I would like the  
14 Court at this point to at least preliminarily rule on that  
15 is because we do have a list of witnesses that I want to  
16 make sure that the defense has of everyone we would intend  
17 to call on that issue. I know, I'm not asking the Court  
18 to say specifically what witnesses can testify to at this  
19 time. I think that is premature, but I think just a  
20 general ruling for the Court on whether or not the Court  
21 will allow victim impact at this point might be helpful to  
22 both sides.

23 BY THE COURT: That case law allow it?

24 BY MR. EVANS: Yes, sir.

25 BY THE COURT: Okay, if the case law allows it,  
26 I'm going to allow it. Let me make this suggestion  
27 though, that if you think you might use a witness, you  
28 need to furnish it to him now.

29 BY MR. EVANS: Yes, sir.

1 BY MR. JOHN GILMORE: The next one is a Demand  
2 for Notice of Aggravating Circumstances and for Disclosure  
3 of Evidence Supporting Mitigating Circumstances. They  
4 have at this time provided us with a notice of two  
5 aggravating circumstances, and we just request that any  
6 further ones be supplemented and also any mitigating  
7 circumstances be provided.

8 BY THE COURT: All right. I don't have that.  
9 What are the aggravating circumstances? I realize armed  
10 robbery is one.

11 BY MR. EVANS: Your Honor, the two aggravating  
12 circumstances - and I'm not going to quote them exactly -  
13 but one is that the murder was committed during the  
14 commission of an armed robbery, and the other one is that  
15 the murder was committed to eliminate any witnesses to  
16 avoid escape in this case.

17 BY THE COURT: Okay. And did you give them any  
18 mitigating circumstances?

19 BY MR. JOHN GILMORE: No, Your Honor.

20 BY THE COURT: Okay.

21 BY MR. JOHN GILMORE: May I proceed, Your  
22 Honor?

23 BY THE COURT: On that motion?

24 BY MR. JOHN GILMORE: Oh.

25 BY THE COURT: On that motion, I'm going to  
26 sustain the Motion as to that being your aggravating  
27 circumstances and that y'all have no mitigating  
28 circumstances; is that correct?

29 BY MR. EVANS: Yes, sir.



1                   BY THE COURT: Okay, all right.

2                   BY MR. JOHN GILMORE: The next Motion is a  
3 Motion to Adjourn at a Reasonable Time. This trial, as I  
4 have said before, could last up to two weeks. We are  
5 going to need adequate time after the day's end to recap  
6 with our client, recap with ourselves what evidence has  
7 been submitted that day and also prepare for the next days  
8 and the next witnesses, and if possible, if necessary, to  
9 issue new subpoenas for any witnesses that we didn't  
10 intend to call that are going to be necessary. We just  
11 request that reasonable time be set for beginning and  
12 ending of the court on a daily basis.

13                  BY THE COURT: Okay, well, here is what we are  
14 going to do. We are going to begin testimony at 9 o'clock  
15 each day. If there are preliminary matters to be taken  
16 up, I'm probably going to take them up at 8 o'clock on  
17 that particular day. I anticipate we will probably  
18 terminate about 5 o'clock each day, but I'm going, but  
19 that depends on what the circumstances are. If we have,  
20 for instance, if we have a chance to get through with the  
21 guilt phase by 6 o'clock and turn it over to the jury, we  
22 are probably going to go ahead with that. So I'm going to  
23 make, I reserve my ruling as to when we quit each day  
24 depending on what the facts are at that time. Also, I am  
25 aware of the Supreme Court decisions that limit how long  
26 we can go, and we are not going, we are not going to go to  
27 10 or 12 o'clock every night.

28                  All of you need to understand though that if this is  
29 a two week trial, it is likely that we will try, we will



1           have court on one Saturday.

2                       BY MR. JOHN GILMORE: May I proceed with the  
3           next motion?

4                       BY THE COURT: Uh-hum.

5                       BY MR. JOHN GILMORE: The next motion is a  
6           Motion for any Disclosure of any judicial basis for any  
7           possible or judicial recusal. In this case there are  
8           several victims, victims' families. We are not in the  
9           position to know who you might have had dealings with, who  
10          you have had kin, who you are kin to. We just make a  
11          motion that you provide us with any possibility of  
12          judicial recusal.

13                      BY THE COURT: I knew none of the victims  
14          personally. Ms. Tardy's stepson, I knew in high school.  
15          He is a lawyer in Jackson. I haven't seen Tommy in ten or  
16          fifteen years. Other than that, I didn't know any of them  
17          or the parties and I know of no other reason. I think, I  
18          think the young man that was killed is kin to a friend of  
19          mine in Attala County, but I have had no contact with  
20          him. I know of no reason why that, the fact that they  
21          were kin would cause me to recuse myself. Ken Loftin, I  
22          think, is kin to them.

23                      BY MR. JOHN GILMORE: Thank you, Your Honor, for  
24          your honesty. The next motion is also a Motion for  
25          Discovery of any possible--

26                      BY THE COURT: --Didn't you have one of those  
27          motions for the State too?

28                      BY MR. JOHN GILMORE: Yes. That's what I'm  
29          doing now.

1                   BY THE COURT: I don't want to leave them out.

2                   BY MR. JOHN GILMORE: For any possible basis for  
3                   disqualification of the prosecuting attorney or his  
4                   staff.

5                   BY MR. EVANS: We have given him proper  
6                   discovery, Your Honor. I know of no reason other than the  
7                   fact that I think that every person that commits a crime  
8                   like this ought to be punished.

9                   BY MR. BILLY GILMORE: If he is guilty, Your  
10                  Honor.

11                  BY THE COURT: Noted.

12                  BY MR. JOHN GILMORE: The next motion is a  
13                  Motion to Preclude Prosecution from seeking to rely on  
14                  Mississippi Code Annotated 99-19-101, subparagraph 7,  
15                  subparagraph (b), (c), and (d), which is more specifically  
16                  relates to the sentencing of the death penalty. Unless  
17                  the Defendant is actually found to have actually killed,  
18                  attempted to kill, or that the Defendant intended that a  
19                  killing take place and also that the Defendant  
20                  contemplated a lethal force be employed. It is not--  
21                  armed robbery is not per se a violent crime. I would say  
22                  more armed robberies occur and there is no violent crime  
23                  committed other than the fact that he had a gun when  
24                  someone was robbed or a lethal weapon. We request that  
25                  the Court not be allowed to rely on this unless it is  
26                  specifically proven that the Defendant actually intended  
27                  on the killing during the course of that crime or that  
28                  he contemplated using the lethal force or that he actually  
29                  killed as set forth in the statute.

1 BY MR. EVANS: Your Honor, I think the rules are  
2 pretty clear on that, that the Court has said that the  
3 Enmund factors must be the ones that are viewed, and the  
4 Court has affirmed them being used in numerous cases, I  
5 think. In the particular case, I think, that was cited in  
6 there where Tyson v. Arizona was, in that particular case  
7 there was a robbery where no death occurred. I think in  
8 any case where a death does occur, our law and also the  
9 Supreme Court says that any of the Enmund factors may be  
10 found.

11 BY THE COURT: That Motion is overruled.

12 BY MR. JOHN GILMORE: Your Honor, at this time  
13 we would also make a-- it's not set for today, but we  
14 would also make a renewed Motion for Discovery. He is  
15 steadily providing us with discovery. There are some  
16 other things that we have requested that we have not  
17 gotten.

18 BY THE COURT: Okay.

19 BY MR. EVANS: I would like to know what, Your  
20 Honor, because from what I know, we are constantly  
21 providing discovery as we get it and know about it. If  
22 there is anything specifically that he is saying that he  
23 is entitled to that he hasn't got, I would like to know  
24 what he is talking about.

25 BY THE COURT: Okay, now this is the point I do  
26 want to address because I don't think either side is  
27 understanding what I meant when we were setting these  
28 deadlines. The way they do it, the way you do it in  
29 federal court is they have show and tell. Everybody gets

1           together and sees it all, and that's really what I'm  
2           looking for. In other words, I thought you had  
3           everything, and I found out that today you are just going  
4           to see some stuff. I need for them to get all of it that  
5           y'all have, all of it that you have got access to, and we  
6           need to do that -- I'm not saying we have got to do it  
7           today, but I want to do it within the next two weeks.

8                     BY MR. EVANS: As far as I know, we have done  
9           that, Your Honor.

10                    BY MR. JOHN GILMORE: Well, Your Honor, we got  
11           something from them today that they had had since right  
12           after the murders.

13                    BY MR. EVANS: A videotape that we furnished on  
14           discovery a long time ago, some pictures--

15                    BY MR. JOHN GILMORE: --But we are just now  
16           actually getting them.

17                    BY MR. EVANS: Well, that is not the point. We  
18           made them available. Now we are going further than we  
19           have to go, and we are actually making them copies of  
20           things like the videotapes. That is not what the Rules  
21           say. The Rules say we have to discover them to them and  
22           make them available, but we are even going further than  
23           that.

24                    BY THE COURT: Okay, all I want to do is let's  
25           set a date for them to be available, and then it's going  
26           to be up to them to get up there and see them. What I  
27           want y'all to do is to produce everything that you have at  
28           a time certain, and then I'm going to order them to be  
29           there to see it.

1 BY MR. EVANS: While we are on this point, if I  
2 may, we have gotten no discovery other than a list of  
3 witnesses. At this point I assume that they have talked  
4 to witnesses. We have no summaries of what they expect  
5 any witness to testify to. We have no statements. Unless  
6 they have nothing and have talked to nobody, we have not  
7 gotten proper discovery yet, and we would ask again that  
8 we be given reciprocal discovery.

9 BY THE COURT: All right. Didn't I order that?

10 BY MR. EVANS: Yes, sir.

11 BY THE COURT: When was the date on it?

12 BY MR. HORAN: July 25th.

13 BY THE COURT: July 25th?

14 BY MR. HORAN: June 25th, had to be completed by  
15 June--

16 BY THE COURT: --I don't believe it was July  
17 25th.

18 BY MR. EVANS: May have been June, June 25th.  
19 That's right.

20 BY THE COURT: June 25th? Okay, how come y'all  
21 haven't given it to them?

22 BY MR. JOHN GILMORE: We have given them  
23 everything that we have at that time, Your Honor.

24 BY THE COURT: Okay, but there is where y'all  
25 are missing my point. The time is now. I mean, you know,  
26 somebody is going to end up having some of their evidence  
27 excluded at trial, and that's the reason I want everybody  
28 to produce what they have got to produce to each side so  
29 can get the discovery process over. The intent, the

1           purpose of those deadlines was so that discovery didn't go  
2           on until October the 1st. I mean that's the reason we set  
3           this case out six months ahead of time so everybody has  
4           got time. You are going to have to spend the time to get  
5           it done. The discovery is due, and to say well, I just  
6           didn't get it done and I will produce it when I have got  
7           it is not going to be sufficient for either side. And all  
8           I'm trying to do is get everybody, I want everybody on my  
9           plane, on my schedule.

10                 So y'all tell me when y'all can get all your stuff  
11           together and let's, we will have a day.

12                 BY MR. EVANS: Your Honor, specifically on that,  
13           we have been furnished names of witnesses they expect to  
14           testify as to an alibi. I would assume if they have  
15           witnesses to an alibi, they have talked to them about what  
16           they would expect them to testify to. None of that we  
17           have been furnished.

18                 BY MR. JOHN GILMORE: Your Honor, we don't have  
19           any transcribed reports at this time. We have no recorded  
20           reports, statements at this time.

21                 BY THE COURT: You are getting names and  
22           addresses?

23                 BY MR. JOHN GILMORE: We have names and as many  
24           addresses as we have, Your Honor. As a matter of fact,  
25           they have talked to several of our witnesses and given us  
26           transcripts.

27                 BY MR. BILLY GILMORE: Which we appreciate.

28                 BY MR. EVANS: I just hope that is not the only  
29           time they have been talked to.

1 BY THE COURT: Do y'all have anything else?

2 BY MR. EVANS: No, sir.

3 BY THE COURT: Do y'all know of anything else  
4 that the Highway Patrol has got?

5 BY MR. EVANS: No, sir.

6 BY THE COURT: Have you asked them to make sure  
7 they don't have anything else?

8 BY MR. EVANS: Yes, sir. As far as I know,  
9 unless there is a new witness that comes up that we don't  
10 anticipate or something along those lines, we have-- we  
11 have offered to let the defense sit down and go through  
12 everything in our file to make sure they have everything.  
13 We are doing everything we can to make sure that they have  
14 everything that we have.

15 BY THE COURT: I realize that and I'm just, all  
16 I want to do is make sure that, in other words, if y'all  
17 have got it produced, I want them to go see it. See what  
18 I'm saying?

19 BY MR. JOHN GILMORE: Yes, sir.

20 BY MR. EVANS: And I have no problem when we get  
21 through today if the defense would like to, to go  
22 through. We brought our entire file with us again. If  
23 they want to go through and see if there is anything in  
24 there other than our personal notes that they have not got  
25 copies of, I will be glad to furnish them. It is our  
26 belief through the discovery that we have given them  
27 everything that is here. Of course, the Court knows that  
28 there is still some evidence at the lab that we have not  
29 received--



1                   **BY THE COURT:** --Well, the DNA I'm not  
2                   counting. I am also excluding from what I'm saying any  
3                   newly discovered evidence if you could not justify they  
4                   had found it. If the Highway Patrol has got something  
5                   they didn't tell you, that doesn't count. But if a  
6                   witness pops up out of the blue, then that probably does.  
7                   The same way--

8                   **BY MR. JOHN GILMORE:** Your Honor, we also  
9                   request if they are having any problems getting their lab  
10                  reports or anything, that they come and get a court order  
11                  from you requiring them, requiring--

12                  **BY THE COURT:** Don't you worry. I'm going to  
13                  tend to the lab part of it. Now wait a minute; we are not  
14                  through. I want to know when you want to see all the  
15                  stuff.

16                  **BY MR. JOHN GILMORE:** Within the next two weeks,  
17                  Your Honor.

18                  **BY THE COURT:** No, no, no. I want a day.

19                  **BY MR. JOHN GILMORE:** May we borrow your  
20                  calendar, Your Honor?

21                  **BY THE COURT:** Uh-hum. What I would like too is  
22                  I would like just for the file so I have got something to  
23                  look back at is when they do this, I would like for y'all  
24                  just to have some statement in the file that you have  
25                  showed them everything you have got.

26                  **BY MR. EVANS:** Yes, sir.

27                  **BY THE COURT:** And then I want a statement from  
28                  the Defendants acknowledging that they saw everything that  
29                  you said you had.



1 BY MR. EVANS: Yes, sir.

2 BY MR. JOHN GILMORE: (Pause) July the 18th,  
3 Your Honor, as a proposed date?

4 BY THE COURT: It will be fine with me. There  
5 is no necessity for me being there, so I am just setting  
6 this up for y'all's sake. I do think it is probably  
7 necessary that the Defendant be there.

8 BY MR. EVANS: Well, if the Defendant is going  
9 to be there, I guess it needs to be in a courthouse.

10 BY MR. BILLY GILMORE: Winona?

11 BY MR. EVANS: Will be fine.

12 BY THE COURT: I think y'all will both agree  
13 that he ought, that he needs to be there. Okay, if  
14 matters come up where you need me to rule on it, where are  
15 you going to do it? In Winona?

16 BY MR. EVANS: Yes, sir. It'll probably be more  
17 convenient.

18 BY THE COURT: Okay, if y'all have matters that  
19 come up that I need to tend to on that, y'all can contact  
20 me and I will come do that. Other than that, this is just  
21 for y'all. Now I need a statement from y'all in the file  
22 that you have furnished all reciprocal discovery that you  
23 have.

24 BY MR. JOHN GILMORE: Yes, Your Honor.

25 BY THE COURT: My intention in doing all this,  
26 as y'all know, is we have got a week that they have given  
27 us or two weeks to give us up here. I want to keep this  
28 thing on schedule. I don't want us to be at the last  
29 minute have something pop up that we should have tended to

1           that we haven't.

2                   BY MR. JOHN GILMORE: Your Honor, we had passed  
3 over a Motion to Control--

4                   BY THE COURT: I want to go back on one motion  
5 too. On that motion about excluding witnesses from the  
6 voir dire, that order will also apply to defense witnesses  
7 too as to the guilt phase.

8                   Okay, which motion?

9                   BY MR. JOHN GILMORE: The Motion to Control  
10 Prejudicial Publicity.

11                   BY MR. BILLY GILMORE: Number 3 on the list,  
12 Your Honor.

13                   BY THE COURT: Right.

14                   BY MR. JOHN GILMORE: You had passed over it.

15                   BY THE COURT: Y'all want a gag order?

16                   BY MR. JOHN GILMORE: Well, Your Honor, I have  
17 physically seen a reporter with a copy of the witness  
18 list, and I would request that a gag order be issued.

19                   BY THE COURT: Okay. I'm going to enter a gag  
20 order on it. Y'all want to get together and work up the  
21 form?

22                   BY MR. HORAN: No, sir.

23                   BY MR. EVANS: No, sir. We really don't want to  
24 be involved in anything dealing with it.

25                   BY THE COURT: I will do it. I will enter an  
26 order limiting the publicity.

27                   BY MR. JOHN GILMORE: Thank you, Your Honor.  
28 Until such time, both parties and all law enforcement  
29 officials involved with this case are prohibited from

1           discussing this matter with the press.

2                   BY MR. EVANS: Yes, sir. I think what opposing  
3 counsel is referring to, instead of attorneys, is what is  
4 in the court file, Your Honor.

5                   BY MR. JOHN GILMORE: Also the court file.

6                   BY MR. EVANS: I think that is basically what he  
7 is referring to in this motion. He is not wanting news  
8 media to be able to get to the court file itself. I don't  
9 think there is any allegation from either side that either  
10 side has been--

11                   BY THE COURT: --No, they are not; I know.  
12 That's correct. Well, I will have to look into my ability  
13 to seal the records.

14                   BY MR. JOHN GILMORE: It's going to be four  
15 separate trials. We are submitting to the Court, they are  
16 submitting their discovery, and we are submitting our  
17 discovery. Until the Court has ruled on what is possible  
18 and allowed to be entered, I would suggest that it needed  
19 to be sealed.

20                   BY MR. EVANS: Your Honor, one thing just for  
21 the record purposes, not necessarily for the Court's  
22 benefit, but for the record; when we are supplementing  
23 into the record our discovery, we are not actually putting  
24 the physical discovery in the court file. We are just  
25 supplementing the headings of what we are giving in  
26 discovery, cover sheets. So the actual discovery and the  
27 evidence that we are going to use is not in the court  
28 file.

29                   BY THE COURT: Good, and both sides, let's do

1 not file it in the court file. It is not required by the  
2 Rules and just do not file that. If that is the case,  
3 where would the witness list come from?

4 BY MR. HORAN: It would come from the discovery,  
5 response to discovery.

6 BY THE COURT: Oh, it's just what--

7 BY MR. HORAN: List of witnesses under the first  
8 part of the discovery.

9 BY MR. EVANS: On the heading sheet we are  
10 required to actually list the witnesses that we intend to  
11 call, so they are on there. As far as any other evidence,  
12 it wouldn't be.

13 BY THE COURT: As to what they are going to say  
14 or anything like that, okay. I don't find that that in  
15 itself is prejudicial. I will order that no discovery,  
16 that no responses to discovery be filed directly in the  
17 court file in this matter until such time as that becomes  
18 an issue.

19 BY MR. EVANS: And I think the Rules pretty much  
20 limit what the attorneys can discuss anyway.

21 BY THE COURT: Right. Basically, that is all  
22 this order is going to say. It's going to follow the  
23 Rules.

24 BY MR. JOHN GILMORE: Your Honor, that's all the  
25 motions we have.

26 BY MR. HORAN: Your Honor, they have got one  
27 about the Court Reporter providing doughnuts and coffee  
28 for everybody, I believe.

29 BY THE COURT: I made a promise I would address

1           that one.

2                   BY MR. BILLY GILMORE: Your Honor, I will defend  
3 her on that. I don't think she should.

4                   BY THE COURT: She called upon me to defend her.

5                   BY MR. BILLY GILMORE: I think the Judge should  
6 do that.

7                   BY THE COURT: What is your motion?

8                   BY MR. BILLY GILMORE: There was no motion. He  
9 was just pulling your leg, Judge.

10                  BY MR. EVANS: No, there is too.

11                  BY THE COURT: No, somebody said there was a  
12 motion. The Court Reporter told me there was a motion.

13                  BY MR. HORAN: It is a motion. We have got a  
14 copy of it.

15                  BY MR. EVANS: Subsections "a" through "l."

16                  BY MR. JOHN GILMORE: That's a Motion to require  
17 that the Court Reporter transcribe the entire proceedings,  
18 and from what I understand, you have been, she has been  
19 there at all proceedings at this time.

20                  BY MR. EVANS: That part of it we do not object  
21 to, Your Honor. There are specific parts in there that I  
22 don't think are proper, but we have no problem with the  
23 Court ordering that all proceedings be recorded by the  
24 Court Reporter. But, you know, I don't know if they wish  
25 to bring up any of the specific parts in that Motion, but  
26 there are some parts, specifically "all testimony of all  
27 witnesses, including a careful record of all exhibits  
28 relating to each witness, and the inclusion of copies of  
29 all exhibits proffered, submitted and admitted into

1 evidence." You know, I think that in any capital case it  
2 is necessary that a complete record of what transpired be  
3 there. But to require the Court Reporter to do more than  
4 just transcribe what is proceeding in court would be  
5 asking too much of the Court Reporter.

6 **BY THE COURT:** Well, as far as her transcribing  
7 what all goes on every time we have a hearing and stuff  
8 like that, she is going to do that. As to anything over  
9 and above that, y'all would have-- are you raising that?

10 **BY MR. JOHN GILMORE:** No, Your Honor.

11 **BY THE COURT:** Okay, all right. I sustain the  
12 Motion as to her transcribing all of the court proceedings  
13 in this matter in the manner normally done.

14 **BY MR. JOHN GILMORE:** That's all, Your Honor.

15 **BY THE COURT:** Okay. I anticipate that we will  
16 have to have-- well, we may have to have some other type  
17 hearing in relation to the DNA as that goes forward.  
18 Y'all can let me know as to how that is progressing.  
19 Okay. Anything further?

20 **BY MR. EVANS:** Nothing further from the State,  
21 Your Honor.

22 **BY MR. JOHN GILMORE:** Nothing further from the  
23 Defendant.

24 **BY THE COURT:** Court is adjourned.

25 MOTION HEARING OF JULY 1, 1997 ADJOURNED.  
26  
27  
28  
29

1 (THE FOLLOWING PRE-TRIAL HEARING WAS HELD ON  
2 SEPTEMBER 22, 1997, IN OPEN COURT IN KOSCIUSKO,  
3 MISSISSIPPI, WITH THE FOLLOWING PEOPLE PRESENT: THE  
4 COURT, HON. DOUG EVANS AND HON. KEVIN HORAN REPRESENTING  
5 THE STATE OF MISSISSIPPI; HON. JOHN GILMORE REPRESENTING  
6 THE DEFENDANT; THE DEFENDANT HIMSELF:)

7 BY THE COURT: This is State of Mississippi  
8 versus Mr. Flowers. One of the reasons we are here -  
9 y'all may have other business. One of the reasons we are  
10 here is I have received from the Clerk in Lee County a  
11 list of people who have been served with jury summons and  
12 have called her or contacted the Court about reasons that  
13 they cannot serve, some of which it is of necessity have  
14 to be heard in open court. I want to see which of these  
15 we can agree on and which we can't, and then I will know  
16 what to tell some of these people. Everybody understands  
17 that I am sure.

18 BY MR. JOHN GILMORE: Yes, sir.

19 BY THE COURT: Okay, let me just, if I can--  
20 y'all both have lists? A copy?

21 BY MR. EVANS: Yes, sir.

22 BY MR. GILMORE: Yes, sir.

23 BY THE COURT: Let me just go down and see if  
24 anybody has got any objection. The first one is Florence  
25 B. Frederick. Her excuse is conveyed to the Court by her  
26 daughter. She is a missionary. She is in France, and she  
27 will be there until December, 1998 which is, of course,  
28 after-- well, that is next year, so she will be gone for a  
29 year. Whether I excuse her or not, she is not going to be

1           there, so I'm going to go ahead and excuse her. Any  
2           objection to that?

3                     BY MR. JOHN GILMORE: No, Your Honor.

4                     BY THE COURT: Okay. Bruce Pugh is a Tupelo  
5           high school teacher and a basketball coach. If this was a  
6           case where it was going to be one or two days, that would  
7           not be an excuse, and I would require him to serve. In  
8           light of the fact that this case could go two weeks and he  
9           would be out of the classroom for that period of time,  
10          that is going to, it is going to take up all of his leave  
11          days, I am sure, and it's probably going to necessitate  
12          him having to pay somebody out of his pocket. Now I don't  
13          know that. He has not told me that. The teachers I have  
14          had before me in bringing up these reasons, I think that  
15          is a valid statement that I have just made. He would be  
16          one that I would certainly entertain excusing because of  
17          the length of this trial and for no other reason. Anybody  
18          got any objection to him being excused?

19                    BY MR. JOHN GILMORE: Your Honor, without  
20          further information whether there is availability of  
21          substitutes to teach or to coach, I would object until we  
22          have--

23                    BY THE COURT: --Okay, I'm going to require him  
24          to come. Then if he can produce that, then he can present  
25          that in open court on the first day. Okay, all right.  
26          The third one is Ashley Kahlstorf - K A H L S T O R F.  
27          She is a full time student at Rhodes College in Memphis.  
28          There are going to be several on here that are students  
29          meaning they are students, of course, out of Lee County



1 and will not, will be out. This would cause them to miss,  
2 because of the timing of this, they would miss probably a  
3 week and a half to two weeks out of school. Any objection  
4 to that?

5 BY MR. JOHN GILMORE: No, Your Honor.

6 BY THE COURT: Okay. The next one is Sue  
7 Gardner. She is Judge Gardner's wife. That does not  
8 automatically excuse her at all, and you may want her on  
9 the jury. Do you want her to come?

10 BY MR. JOHN GILMORE: Yes, Your Honor.

11 BY THE COURT: Okay. Fred Edwards owns his own  
12 business and is a caretaker of his mother. Owning his own  
13 business would probably be sufficient to get him off. I  
14 don't know all the facts on that. Also, he has the  
15 additional reason that he is a caretaker of his mother.  
16 If that means he has to do that and nobody else does, then  
17 he would be subject to being excused. How do y'all feel  
18 about that?

19 BY MR. JOHN GILMORE: Your Honor, I'm going to  
20 object to this one being excused until we have further  
21 information. If he owns his own business, it may be an  
22 excuse, but he may have sufficient number of people to  
23 take care of the business.

24 BY THE COURT: Okay.

25 BY MR. JOHN GILMORE: And if, I don't see how he  
26 can be the only one who can take care of his business if  
27 he is the only one taking care of his mother so that might  
28 be--

29 BY THE COURT: --That is, that is true. Okay.

1           The next one is Sarah Harris. She has got a new  
2           grandchild that was born in August. Of course, that  
3           wouldn't be an excuse. She is undertaking chemo  
4           treatments. It would look like to me if she was  
5           undertaking that, she could have had a doctor's excuse.  
6           She does have, she has bought plane tickets where if she  
7           were to miss the flight, she would lose and that would be  
8           a financial hardship on her. I--

9                   BY MR. HORAN: It says Mr. Harris is undertaking  
10           chemo treatments.

11                   BY THE COURT: I'm sorry; Mr. Harris has, not  
12           her. So that wouldn't make any difference. The question  
13           about the plane tickets and all, that is one that I have  
14           regularly. To lose those plane tickets, I think, is a  
15           financial hardship, and I will probably excuse--

16                   BY MR. EVANS: --If they have already bought the  
17           plane tickets, we wouldn't object to that one.

18                   BY MR. JOHN GILMORE: I have no problem with it.

19                   BY THE COURT: Okay, I think she would not be a  
20           very satisfying juror to either side if you made her lose  
21           her tickets. Okay, number 7 is Barbara Homan. She claims  
22           she is her mother's sitter, but she does work. It says,  
23           "Call Steve Holland. This is his cousin." Steve Holland  
24           is an attorney, isn't he?

25                   BY MR. EVANS: I don't know.

26                   BY THE COURT: I think with Upchurch and them,  
27           isn't he?

28                   BY MR. RUSTY HARLOW: (Attorney from Grenada who  
29           was present in the courtroom) Yes.

1           **BY THE COURT:** Okay, we are going to make her  
2 come. I may let her go. I want to see what we have got.  
3 Keith Richards is a full time medical student. Obviously,  
4 that would disrupt him enormously to be there for two  
5 weeks. Any objection to that?

6           **BY MR. EVANS:** The State has no objection.

7           **BY MR. JOHN GILMORE:** No, Your Honor.

8           **BY THE COURT:** Dr. Jim Kirksey. I believe this  
9 is the doctor who has a seminar set. I thought I had, I  
10 thought I had a letter from him. I'm supposed to have a  
11 letter from him. I will have to confirm if that is this  
12 particular doctor. Let me go do that real quick.

13                   (The Court left the courtroom to go call the  
14 court administrator. Upon his return, proceedings  
15 continued:)

16           **BY THE COURT:** Okay, Dr. Kirksey has a seminar  
17 in Tennessee that week that he has already scheduled. Now  
18 whether he is participant or just going to it, I don't  
19 know, but he is involved in a seminar. Any objection to  
20 him?

21           **BY MR. JOHN GILMORE:** Do you know what the dates  
22 are?

23           **BY THE COURT:** It is starting that week, the  
24 13th.

25           **BY MR. EVANS:** No objection from the State.

26           **BY MR. JOHN GILMORE:** No objection.

27           **BY THE COURT:** Marla Ramsey. Her sister's  
28 wedding is in South Carolina on the 18th. She is leaving  
29 on the 17th. Obviously, if this case goes like we expect,

1 we will be working that day.

2 BY MR. EVANS: The State doesn't object on her.

3 BY MR. JOHN GILMORE: No objection, Your Honor.

4 BY THE COURT: Greg Roy. Let's see. I have  
5 gotten -- I guess y'all have got a copy of this too. He  
6 works for Action Industries. Apparently he has plane  
7 tickets to be out, leaving the 10th of October.

8 BY MR. HORAN: Going to be gone for ten days.

9 BY THE COURT: Yeah, he is in High Point, North  
10 Carolina. That would indicate to me he is in the  
11 furniture industry and he is going to be out ten days.  
12 It's a non-refundable ticket.

13 BY MR. EVANS: No objection from the State.

14 BY MR. JOHN GILMORE: No objection, Your Honor.

15 BY MR. HORAN: Judge, this other letter has got  
16 a juror's name on it that you haven't got listed.

17 BY THE COURT: Yeah, the third letter. I  
18 haven't read it either. Hold on. (Pause) Okay, I don't  
19 understand why I'm getting a letter from Ohio on this.

20 BY MR. HORAN: General counsel for that company,  
21 I assume.

22 BY THE COURT: Yeah, but how do they know what  
23 the deal is?

24 BY MR. HORAN: Probably faxed it up there.

25 BY THE COURT: Well, is there any objection to  
26 me excusing him, or do you want him to come and let's  
27 see?

28 BY MR. EVANS: I haven't even read the letter.

29 BY THE COURT: It says that he is in, he is in

1 the retail sale of electronics and home appliances. And  
2 he works-- well, y'all know what Rex is. You know, they  
3 sell tv's and all like that. Apparently, the last quarter  
4 which would include Thanksgiving through Christmas is when  
5 a big part of their business is during that time. He  
6 makes his based, I guess, looks to me like his  
7 compensation is based upon the monetary performance of the  
8 stores located within his region. And I don't know  
9 whether that means he is on commission or not, but it says  
10 if he-- in other words, if it's down, he doesn't make as  
11 much. It may be a financial hardship; it may not.

12 BY MR. JOHN GILMORE: We are going to object  
13 until we have more information.

14 BY THE COURT: Okay, all right. Okay, I thought  
15 I had more than this but I don't. I tell you what.  
16 Anybody call-- you called up there while ago, didn't you?  
17 To Joyce?

18 BY MR. HORAN: I did.

19 BY THE COURT: You don't have that phone number,  
20 do you?

21 BY MR. HORAN: Yeah, I do.

22 BY THE COURT: Let me get it and let's call  
23 Joyce and see if she has got any more other than this  
24 while we are here.

25 BY MR. HORAN: All right.

26 (The Court was in recess after which proceedings  
27 continued with everyone present as follows:)

28 BY THE COURT: I have been in touch with the  
29 Circuit Clerk in Lee County. She only had two additional

1 names for me. One was Larry Jones. He does not fit the--  
2 he will have to come. He may be excused when he gets  
3 there. His employer has called, but he will have to  
4 come. The other one is Evelyn Drury. She works for, it's  
5 like a children's village up there. Her husband runs it,  
6 and she works for it. She has a conference in Detroit.  
7 She has already gotten her airline tickets. The airline  
8 tickets are dated the 7th of October and with a return  
9 trip on the 14th. Any objection to her?

10 BY MR. EVANS: None from the State.

11 BY MR. JOHN GILMORE: No.

12 BY THE COURT: Okay, Ms. Drury is excused.

13 BY MR. EVANS: Is that D R E W E R--

14 BY THE COURT: --All right, I tell you what; we  
15 are going to get a jury if that's--

16 BY MR. EVANS: How do you spell Drury?

17 BY THE COURT: I didn't ask her, but I have got  
18 D-R-U-R-Y. It may be D-R-E-W-E-R-Y.

19 BY MR. JOHN GILMORE: I have got the list here.  
20 It's D-R-U-R-Y.

21 BY MR. EVANS: Okay.

22 BY THE COURT: So like I say, if we don't have--  
23 as close as it's getting and we don't have any more than  
24 that, we are doing pretty good.

25 BY MR. EVANS: Judge, we have got one issue that  
26 we are discussing that we may have one other matter on  
27 this case we need to take up before the Court before the  
28 evening is over.

29 BY THE COURT: Okay. Do you want to do it now

1 or--

2 BY MR. EVANS: Well, we are not prepared yet.

3 BY THE COURT: Okay.

4 (COURT WAS IN RECESS IN THIS MATTER AFTER WHICH  
5 PROCEEDINGS CONTINUED AS FOLLOWS:)

6 BY THE COURT: You may proceed.

7 BY MR. EVANS: Your Honor, in the case of State  
8 of Mississippi versus Curtis Giovanni Flowers, the case  
9 was indicted in Montgomery County as causes number 7447  
10 and 7450. The State would move to consolidate these two  
11 of the four cause numbers which would be the Montgomery  
12 County cause numbers that were on these. The two cases  
13 that would be consolidated are the murder of Bertha Tardy  
14 and also the murder of Derrick Stewart. This would  
15 consolidate two of the four cases basically for judicial  
16 economy so that we would not have to have four separate  
17 trials. The State feels that it would still be more  
18 proper to not combine the other cases so that there could  
19 be at least two trials on this matter.

20 But the State would hereby move at this point that  
21 the deaths of Bertha Tardy and the death of Derrick  
22 Stewart be consolidated and that those two causes be tried  
23 together. The reason that the State has elected to  
24 consolidate these two causes together is at an earlier  
25 date the Court had requested the State to give notice of  
26 which case would go to trial first, and the State had  
27 given notice to the Defense that either the death of  
28 Bertha Tardy or the death of Derrick Stewart would go to  
29 trial first. So the Defense would be prepared, should be



1 prepared for either one of these two or both of these  
2 together.

3 BY THE COURT: Any objection, Mr. Gilmore?

4 BY MR. JOHN GILMORE: First, for clarification,  
5 are we consolidating the other two trials at this time as  
6 well?

7 BY MR. EVANS: All I'm asking for at this point  
8 is to consolidate these two.

9 BY THE COURT: That's all he has asked for at  
10 this time. I would anticipate that probably would be  
11 done down the road, but I can't tell you that right now.  
12 That is all that is before me right now is just these  
13 two.

14 BY MR. JOHN GILMORE: Your Honor, as to  
15 consolidating the trials in which the victims were Bertha  
16 Tardy and Derrick Stewart, we have no objection at this  
17 time. We would rather there be a consolidation-- we would  
18 rather -- on October the 13th we will be ready to proceed  
19 on all four trials, but we have no objection to this  
20 consolidation.

21 BY THE COURT: Okay, in other words, you prefer  
22 that all four had been consolidated rather than two, but  
23 you have no objection to the two being consolidated. Is  
24 that correct?

25 BY MR. JOHN GILMORE: Just for clarification, we  
26 will be ready for all four, whether they're, the Judge or  
27 anyone else makes a motion to consolidate all four of  
28 them. That is not what we are proposing at this time. We  
29 just have no objection to this consolidation. We will be



1 ready for all four trials. (Pause) Nothing further, Your  
2 Honor.

3 BY THE COURT: Okay, the Court finds that the  
4 cost for each of these trials, if they were tried  
5 separately, would run probably somewhere from 20 to 30  
6 thousand dollars of state expense or county expense  
7 involved in that. So there is some judicial economy by  
8 consolidating these matters. There is also the fact that  
9 there has been a change of venue granted, and there is  
10 some possibility that there will be problems about court  
11 facilities for trying all four of them.

12 The Court feels that the State's motion is well taken  
13 and that it is judicially economic to consolidate these  
14 two cases at this time, and that will be the order of the  
15 Court. So those two cases are set for trial on August the  
16 13th-- October the 13th. The other two cases are set  
17 behind that case. In case something happened to those  
18 two, then we would go immediately into the other two, or  
19 one of the other two. Okay?

20 BY MR. EVANS: Yes, Your Honor.

21 BY THE COURT: Let me say this for the record  
22 too. The Court, from the information at arraignment and  
23 in discussions with Counsel, in this matter the Court  
24 finds that the facts in all four of these cases are  
25 similar, or they may not be exact, but it's basically the  
26 same factual situation. Anything else on the Flowers  
27 matter?

28 BY MR. EVANS: Your Honor, the only other thing  
29 that I might bring to the Court's attention: Opposing

1 Counsel made a request this morning at some point before  
2 trial that they be allowed to hear a motion on objections  
3 to some photographs. I don't know whether the Court would  
4 like to do that before trial or during trial, whatever the  
5 Court would like to do.

6 BY THE COURT: Well, I would prefer to do it  
7 before trial to the extent that I can. I mean there may  
8 be, it may be that I will have to make a ruling where I  
9 will reserve my ruling depending on what the evidence  
10 shows. I don't have any problem about doing it before  
11 trial. The fact is I can do it next Monday or next  
12 Wednesday in Grenada.

13 BY MR. JOHN GILMORE: Either of those dates are  
14 fine with the Defense.

15 BY THE COURT: Okay, well, why don't we do it on  
16 that Monday, and I will just set y'all first before we do  
17 the appeal cases. We will get that out of the way at 9  
18 o'clock. Y'all will make arrangements for Mr. Flowers to  
19 be there; is that correct?

20 BY MR. EVANS: Yes, sir.

21 BY THE COURT: A week from-- well, what is  
22 today? Monday. A week from today.

23 BY MR. EVANS: A week from today.

24 BY THE COURT: The 29th.

25 BY MR. JOHN GILMORE: Where is that going to be,  
26 Your Honor?

27 BY THE COURT: Grenada.

28 BY MR. JOHN GILMORE: I have nothing further,  
29 Your Honor.

1 BY THE COURT: Okay, y'all can head back.

2 BY MR. EVANS: Thank you, Judge.

3 BY THE COURT: Yes, sir. Thank you.

4 BY MR. GILMORE: Thank you, Your Honor.

5 HEARING OF SEPTEMBER 22, 1997 CONCLUDED.

6 (NOTE: After this hearing was concluded, the  
7 next hearing date was changed by agreement to  
8 Wednesday, October 1 in Grenada.)

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

1 (THE FOLLOWING HEARING WAS HELD IN GRENADA,  
2 MISSISSIPPI, ON OCTOBER 1, 1997, WITH THE FOLLOWING  
3 PEOPLE PRESENT: THE COURT, HON. DOUG EVANS AND HON.  
4 KEVIN HORAN, REPRESENTING THE STATE OF MISSISSIPPI;  
5 HON. JOHN GILMORE AND HON. BILLY GILMORE REPRESENTING  
6 THE DEFENDANT; AND THE DEFENDANT HIMSELF.)

7 BY THE COURT: This is causes number CR 97-369  
8 and CR97-372 in the Circuit Court of Lee County,  
9 Mississippi, State of Mississippi versus Curtis Flowers.  
10 It's on a motion for the Court to reconsider and rescind  
11 its order of September 22nd, 1997, consolidating two of  
12 the four indictments against Mr. Flowers, consolidating  
13 for trial two of the four indictments against Mr.  
14 Flowers. All right, it's the State's motion. I will hear  
15 from you.

16 BY MR. EVANS: Your Honor, the State, as the  
17 Court is aware but for the record, had made a motion to  
18 consolidate two of these cases, and the Court, I believe,  
19 was going to grant that but had not signed an order in  
20 that yet. During this time period, we have done some  
21 research and also been advised by the Attorney General's  
22 Office that in Mississippi there is no law that allows  
23 joinder. Based upon that and just out of precaution, not  
24 wanting to commit any type of reversible error in this  
25 case, the Court is asked by the State at this point to  
26 reconsider on the motion that we filed, I believe based  
27 upon the case law of Franks and Naples v. State, 666 So.2d  
28 763. It could possibly be some reversible error in there  
29 especially with it being the State's motion to ask that

1       these be joined. In that case the Court cites that there  
2       is no law of joinder in the State of Mississippi. Based  
3       upon that, we would ask the Court to reconsider and leave  
4       the cases separated as they were indicted.

5               **BY THE COURT:** Y'all want to be heard?

6               BY MR. BILLY GILMORE: Your Honor, we don't have  
7       any objections to that, but at this point, we would move  
8       the Court to join all four cases. I understand there is  
9       law to consolidate all four cases be tried at the same  
10      time. I understand there is law saying that the Defense  
11      can request a consolidation of cases, and at this time we  
12      would move to consolidate all cases to be heard at the  
13      same time.

14              **BY THE COURT:** Have you got that law?

15              BY MR. JOHN GILMORE: It's, my secretary is  
16      supposed to be faxing it to the DA's office.

17              **BY THE COURT:** Well, the Court is of this  
18      opinion. I think it's a discretionary matter with me. I  
19      have read Franks and Naples. It is distinguishable from  
20      this case. It involved two different defendants, and they  
21      ran into the same problems that you run into when you have  
22      got a severance and one was testifying against another.  
23      However, in that case they made some statements of law  
24      that said there was no joinder. You could not join  
25      indictments in this state. In light of the fact that they  
26      very well might would affirm the order consolidating them,  
27      but in-- I'm going to be overly cautious, and I'm going to  
28      unconsolidate them, and we will go to trial on the case  
29      where Ms. Tardy was the victim. Is that correct?

1 BY MR. EVANS: Yes, sir.

2 BY THE COURT: I don't know what number that is,  
3 but that's the case--

4 BY MR. HORAN: It's in that order, Your Honor,  
5 that I submitted to you, the last paragraph.

6 BY THE COURT: All right.

7 BY MR. HORAN: It's 369.

8 BY MR. EVANS: Right; CR97-369.

9 BY THE COURT: Okay.

10 BY MR. BILLY GILMORE: Your Honor, do you want  
11 the Defense to file a written motion to the consolidation  
12 of all four cases where we can have this in record?

13 BY THE COURT: You can. Yeah, I think you need  
14 to do that, and I think it needs to be in writing, and  
15 y'all need to be, when you call it up, you need to be in a  
16 position to bring me your authority.

17 BY MR. BILLY GILMORE: All right, sir. We will  
18 do that.

19 BY THE COURT: Let the record reflect, I think  
20 the motion may. Let the record also reflect that when  
21 these matters were consolidated, the Defendant had no,  
22 would not agree to the consolidation but had no  
23 objection. Okay, y'all got anything else for me?

24 BY MR. EVANS: Your Honor, the only other thing  
25 that had been set for today, the Defense had an oral  
26 motion to eliminate some of the photographs. I don't know  
27 if there is going to be any way that that can be done  
28 until trial, but we are here for that purpose today if  
29 they have a motion, specific motion they would like to

1 make on that.

2 BY MR. JOHN GILMORE: Your Honor, we don't have  
3 a written motion at this time. I was of the understanding  
4 that they were going to be labeling their exhibits, and  
5 the photographs were some of the exhibits. At this time  
6 if the Court would indulge us in looking through the  
7 photographs and seeing which ones that we would have an  
8 objection to; we don't have a specific objection as of yet  
9 because we haven't, don't know which ones that they are  
10 going to admit.

11 BY MR. EVANS: At this point, Your Honor, all we  
12 have done is mark some for identification. None have been  
13 offered into evidence. So that's where there may be a  
14 problem as far as the Court making any ruling at this  
15 point.

16 BY THE COURT: I think that is almost like a  
17 motion in limine anyhow. I guess it is a motion in  
18 limine. Why don't you file your particular motion after  
19 you have seen the photographs. Y'all can bring that to my  
20 attention. We can do that. We can do that prior to  
21 trial, in Tupelo for that matter. What I anticipate  
22 happening, I may be wrong, but I anticipate it is probably  
23 going to take all that Monday to pick a jury. Once we get  
24 that done, I will get the jury off and sequestered, and  
25 then we can hear that kind of motion, those kind of  
26 motions after we do that.

27 BY MR. EVANS: We are prepared today to show the  
28 Defense photographs and slides that we have marked for  
29 identification.

1 BY MR. BILLY GILMORE: What about videotapes?  
2 Did that include--

3 BY MR. EVANS: --Your Honor-- y'all have got a  
4 copy of the videotape.

5 BY MR. BILLY GILMORE: I know, but are you going  
6 to offer that?

7 BY MR. EVANS: Yeah.

8 BY MR. BILLY GILMORE: That is going to be part  
9 of the-- in other words, slides, photographs, and  
10 videotape is what we are dealing with?

11 BY MR. EVANS: Well, that is part of the  
12 evidence.

13 BY MR. BILLY GILMORE: Well, I mean that's what  
14 we are talking about today?

15 BY MR. HORAN: As far as photographs go.

16 BY MR. EVANS: Yeah. Your Honor, also, I would  
17 like to make a record just so it will be clear. I have  
18 been handed today some Defendant's discovery listing three  
19 witnesses: Steven Davis, Willie Paige, and Chris West. I  
20 was advised by Defense attorney that they have no  
21 addresses on these and don't have any information what  
22 they would be witnesses on at this point. I would object  
23 at this point to any supplemental discovery without at  
24 least a good reason why, and if they are going to be  
25 supplemented, we would at least like to have some  
26 information of what they would be witnesses on and some  
27 type of address or phone number to be able to get in touch  
28 with them.

29 BY MR. BILLY GILMORE: Your Honor, we just



1           obtained these possible witness names, and we will be able  
2           to provide him with addresses probably within this week or  
3           early, the first of next week.

4           **BY THE COURT:** Well, now we are getting down  
5           there to it, y'all. This case is set for the 13th. Y'all  
6           have had six months to investigate this thing.

7           **BY MR. BILLY GILMORE:** Yes, sir, but the State  
8           has had over a year.

9           **BY THE COURT:** Well, they haven't had a year to  
10          investigate your witnesses.

11          **BY MR. BILLY GILMORE:** Yes, sir, but these are  
12          some we just became aware of, and we haven't completely  
13          investigated our--

14          **BY THE COURT:** --Why can't you have them to them  
15          by tomorrow?

16          **BY MR. BILLY GILMORE:** We will try to.

17          **BY THE COURT:** Well, I mean why can't you? You  
18          know their names. Why can't-- have you talked to them?

19          **BY MR. BILLY GILMORE:** No, sir.

20          **BY THE COURT:** Have you talked to them, Mr.  
21          Gilmore?

22          **BY MR. JOHN GILMORE:** No, Your Honor. We just,  
23          I just got these names this morning and prepared this so  
24          that I could get the names to them as soon as possible.

25          **BY MR. BILLY GILMORE:** These are potential  
26          witnesses. We haven't interviewed them. We don't know  
27          what they would testify to, and we have got to do that,  
28          but we will get the addresses in case they need to  
29          interview them.

1                   BY THE COURT: Well, I am sure they are going to  
2 interview them, and they need those addresses. How about  
3 by Friday?

4                   BY MR. EVANS: If we can find them, yes, sir;  
5 that will be fine. The only problem is, what I'm running  
6 into a problem with, Judge, is on this late a date without  
7 being furnished even why they think they might be  
8 witnesses, we don't know if we are talking about alibi  
9 witnesses or what type witnesses we are even talking  
10 about. You know, if they could even at least give us at  
11 this point why they think they may be witnesses. That  
12 would be a help.

13                  BY THE COURT: Are y'all willing to do that?

14                  BY MR. JOHN GILMORE: Well, Your Honor, I was  
15 just advised by my client that those three new witnesses  
16 are in Leflore County Jail.

17                  BY MR. BILLY GILMORE: One of them is out.

18                  BY THE COURT: Okay, are you willing to--

19                  BY MR. JOHN GILMORE: One of them is out. We  
20 haven't had a chance to confer with our client about why,  
21 but at least two of them are still in, he said, but one of  
22 them may be out at this time.

23                  BY THE COURT: What do the Rules require as far  
24 as summary of what the witnesses are going to testify to?  
25 I know y'all give it, but are you required to?

26                  BY MR. EVANS: Yes, sir, which we do not have on  
27 any Defense witness at this point, Your Honor. We have  
28 brought that to the Court's attention on several  
29 occasions, and we still do not have any information on any

1 Defense witness.

2 BY THE COURT: Have we got a rule book?

3 BY MR. HORAN: I can get one.

4 BY MR. EVANS: Judge, their fax is at the  
5 office. If I may, I will call and see if I have got  
6 somebody over there that can run it over here.

7 (Mr. Horan and Mr. Evans leave the courtroom.  
8 Upon their return and after the Court read in the rule  
9 book, the hearing resumed as follows:)

10 BY THE COURT: I think the Rules require them to  
11 produce any written or recorded statement that they may  
12 have. It doesn't require them-- no, it requires y'all to  
13 do the oral but it doesn't require them.

14 BY MR. HORAN: Let me look at the rule.

15 (Rule book handed to Mr. Horan.)

16 BY MR. HORAN: It says under one, the names and  
17 addresses.

18 BY THE COURT: Which I'm going to require.

19 BY MR. HORAN: "With a copy of the contents of  
20 any statement, written, recorded or otherwise preserved."

21 BY THE COURT: Right, and then what does it  
22 say?

23 BY MR. HORAN: That's all.

24 BY THE COURT: In relation to what the defense  
25 produces?

26 BY MR. HORAN: That's right.

27 BY THE COURT: Go back and look at what it says  
28 under yours.

29 BY MR. HORAN: We have to give the substance of

1 any statement of any witness--

2 BY THE COURT: --oral.

3 BY MR. HORAN: Their witness or our witness.

4 BY THE COURT: Otherwise preserved, by the  
5 distinction they are making in those rules, otherwise  
6 preserved, meaning just put down on paper or it is  
7 recorded in some manner, and it makes a distinction  
8 between the prosecution and the defendants.

9 BY MR. HORAN: Yes, sir.

10 BY THE COURT: And I assume that had to be for  
11 some purpose because it's the exact same language except  
12 they do not add oral statements in the part about the  
13 defense. Why, I don't know. Nothing in those rules  
14 provides either side have to make a summary of what they  
15 are going to say. That is the law, I am pretty sure.

16 BY MR. HORAN: We have to under 1.

17 BY THE COURT: What does it say?

18 BY MR. HORAN: We are to provide the substance  
19 of any oral statements which means, would be a substance.  
20 We would have to tell them what they were going to say.

21 BY THE COURT: The rules also prohibit anybody  
22 from telling these folks they can't talk to you and all  
23 like that. We know where they are. So y'all get your  
24 investigator down there and talk to them. I'm not  
25 requiring them to give you the oral part of it. Y'all got  
26 any written statements? I guess y'all have no written  
27 statements or recorded statements from these people; is  
28 that correct?

29 BY MR. BILLY GILMORE: No, Your Honor.

1           **BY THE COURT:** All right, where are these people  
2 right now? They are in the Leflore County Jail?

3           **BY MR. HORAN:** Your Honor, my understanding of  
4 the rules would be if they interview a witness and they  
5 take notes on that witness--

6           **BY THE COURT:** That would be preserved. Well,  
7 you may have a work product--

8           **BY MR. HORAN:** --It would not be work product  
9 because it's a statement of a witness. If they have got  
10 anything that has recorded in any fashion what their  
11 witnesses have told them, then we are entitled to, and we  
12 don't have any.

13           **BY MR. JOHN GILMORE:** Your Honor, that would be  
14 work product of the attorneys.

15           **BY THE COURT:** Let me see it again. It has got  
16 that defined in there too.

17           (Rule book was given back to the Court.)

18           **BY MR. EVANS:** Which ones of these were in the  
19 jail? John, which ones of these are in jail?

20           **BY MR. JOHN GILMORE:** Let me see the list.

21           (Mr. Gilmore confers with his client.)

22           **BY THE COURT:** It's defines work product. It  
23 says, "shall not be required of legal research or of  
24 records, correspondence, reports, or memoranda to the  
25 extent that they contain the opinions, theories, or  
26 conclusions of the prosecuting or defense attorneys or  
27 members of the staff." You don't have-- that is what the  
28 work product is. What these people said to you, if you  
29 have got it in writing, if you have made notes of that,

1 then that without the opinions you are going to have to  
2 produce that.

3 (Counsel confer.)

4 BY THE COURT: How many--

5 BY MR. HORAN: --which would constitute a  
6 substance of what they told them basically.

7 BY THE COURT: Yeah, but it's the difference  
8 being it's not oral.

9 BY MR. HORAN: Right. The difference is it's  
10 not--

11 BY MR. JOHN GILMORE: Your Honor, we will go  
12 through our notes and have everything by Friday that does  
13 not have an opinion.

14 BY THE COURT: Okay.

15 BY MR. HORAN: No problem.

16 BY THE COURT: Now the one that is not in jail,  
17 who is that?

18 BY MR. EVANS: Willie Paige.

19 BY MR. JOHN GILMORE: He has been in jail, so  
20 the Sheriff should know how to get in contact with him.  
21 All three of those were in the jail.

22 BY MR. BILLY GILMORE: We will provide addresses  
23 as well as we get them by Friday.

24 BY THE COURT: Okay, that's what I am saying.  
25 You are running late now on getting this stuff, this  
26 supplemental discovery in, and you are going to run some  
27 risk of some people not being able to testify. So you  
28 have got to properly attend to this now. Anything else?

29 BY MR. EVANS: Have you got anything else?

1 (State's Counsel confer out of the hearing of  
2 the Reporter.)

3 BY THE COURT: Wait a minute. They were going  
4 to bring that other over here.

5 BY MR. EVANS: Yes, sir.

6 BY THE COURT: Okay, I will just wait and tend  
7 to that.

8 BY MR. BILLY GILMORE: We are probably going to  
9 need to-- we have got some copies of these pictures, maybe  
10 have time to, where we can correlate the I.D. numbers on  
11 ours compared to this where we can study them between now  
12 and trial. Ours are not as good as these, but we at least  
13 need to have the same numbers where we can know which ones  
14 to object to by number. I believe we have photos of  
15 photos, I believe, is what we have.

16 BY MR. EVANS: Only on the polaroids. On these  
17 others, y'all have exact copies.

18 BY MR. BILLY GILMORE: All the polaroids are  
19 strictly from Dr. Hayne's office?

20 BY MR. EVANS: That and some, I think, Hargrove  
21 took at the scene.

22 (Off the record until the fax of the case of  
23 Burney v. State arrived.)

24 BY MR. JOHN GILMORE: This is an '87 case.  
25 There is a specific paragraph here that deals with the  
26 consolidation. This was off my law desk, and my printer  
27 is not working right so some of the paragraphs may be in  
28 there twice.

29 (Pause while the Court reads.)

1           **BY THE COURT:** Let me say for the record; it's a  
2 discretionary call on my part, and I find no prejudice to  
3 the Defendant by these cases being tried separately. In  
4 light of the Naples case, Franks and Naples case, I am  
5 reluctant to consolidate the cases in that that might be  
6 reversible error, and there is not any by not  
7 consolidating them, so that will be the ruling of the  
8 Court.

9           **BY MR. EVANS:** Yes, sir.

10          **BY THE COURT:** Okay, does that get it?

11          **BY MR. EVANS:** Yes, sir.

12          **BY MR. BILLY GILMORE:** Let me ask you one  
13 thing. We will go ahead and do a motion in writing. Do  
14 you want to just prepare an order yourself on what you  
15 ruled?

16          **BY THE COURT:** I will. That will be all right.

17          **BY MR. BILLY GILMORE:** All right.

18          HEARING OF OCTOBER 1, 1997 CONCLUDED.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29



1 (COURT PROCEEDINGS BEGAN IN TUPELO, MISSISSIPPI,  
2 ON MONDAY, OCTOBER 13, 1997, AT APPROXIMATELY 8:35 A.M. WITH  
3 THE COURT MEETING IN CHAMBERS WITH ALL COUNSEL AND WITH THE  
4 DEFENDANT PRESENT, BUT OUTSIDE THE PRESENCE OF THE JURY PANEL.  
5 AT THE SAME TIME THESE PROCEEDINGS WERE GOING ON IN CHAMBERS,  
6 THE CLERK WAS BEGINNING THE PROCESS IN THE COURTROOM OF SEATING  
7 THE PROSPECTIVE JURORS, COLLECTING QUESTIONNAIRES, AND CALLING  
8 THE ROLL OF JURORS. ONE HUNDRED ADDITIONAL NAMES WERE DRAWN ON  
9 THURSDAY, OCTOBER 9, 1997, AT THE DIRECTION OF THE COURT TO  
10 INSURE THAT THERE WOULD BE ENOUGH JURORS. PROCEEDINGS IN  
11 CHAMBERS ON OCTOBER 13TH WERE AS FOLLOWS:)

12 BY THE COURT: What have y'all got?

13 BY MR. BILLY GILMORE: Did y'all have any  
14 motions?

15 BY MR. EVANS: Not at this point.

16 BY MR. BILLY GILMORE: I guess first, Judge, we  
17 need to find out a couple of things. We I.D.'d some  
18 pictures, or at least the State did, and we need to  
19 know at what point we are going to look at those?  
20 Are we going to do them one at a time? Are we going  
21 to do the objection one at a time, or are we going  
22 over them all at one time, or how are we going to  
23 handle that?

24 BY THE COURT: What is going to be your  
25 objection?

26 BY MR. BILLY GILMORE: Well, we are going to  
27 object to some of the pictures.

28 BY THE COURT: Okay, do you know which ones?

29 BY MR. BILLY GILMORE: Yes, sir.

1 BY MR. JOHN GILMORE: We know for sure that we  
2 object to all the ones where there were victims other  
3 than Ms. Tardy.

4 BY THE COURT: Okay.

5 BY MR. BILLY GILMORE: And there is two or three  
6 gruesome pictures we are going to object to.

7 BY MR. JOHN GILMORE: Of Ms. Tardy.

8 BY MR. HORAN: Your Honor, it was my  
9 understanding we were going to pick a jury and do all  
10 this after we got through--

11 BY THE COURT: --Yeah, I will do a 403 hearing  
12 on this stuff when the time comes. Y'all just need  
13 to make your objection. That ought to be pretty  
14 obvious when they are getting ready to do them. If  
15 the State will-- the best thing for y'all to do is  
16 just tell me you are getting ready to do that, and we  
17 will come back here and make a ruling.

18 BY MR. BILLY GILMORE: All right, sir, and the  
19 other thing, that we had previously made a motion  
20 about displaying the Defendant in shackles. Of  
21 course, he was brought up through, I understand,  
22 cameras and jurors and everybody else this morning in  
23 not only leg irons, but shackles around his waist.  
24 Of course, we raise an objection to that.

25 BY THE COURT: Well, I don't know about the  
26 television part of it because I was there when the  
27 elevator door opened and he was on the elevator, and  
28 the television camera was back over on the other side  
29 and could not have taken any pictures of him.

1 BY THE DEFENDANT: He did. He got me outside  
2 when I first got out of the car.

3 BY THE COURT: Well.

4 BY MR. BILLY GILMORE: We just wanted the record  
5 to show we objected to that. It has already been  
6 entered to that.

7 BY THE COURT: Right, and I will see that that  
8 is corrected.

9 BY MR. EVANS: Of course, Your Honor, if I may  
10 just for clarity for the record, I believe the order  
11 is that he is not to be brought in the courtroom in  
12 shackles. So I don't think anybody has violated any  
13 Court orders at this point.

14 BY THE COURT: Well, what I'm going to, my order  
15 is going to be -- to define the order, that was what  
16 the order was. To define it a little bit further,  
17 when they get him inside the courthouse-- he is  
18 entitled to be shackled coming to the courthouse.  
19 Y'all bring him in through the back, don't you?

20 BY TWO GUARDS: Yes, sir.

21 BY THE COURT: Bring him in through the back.  
22 You only have to go about 15 feet to get on the  
23 elevator, so when you bring him in through the back,  
24 once you get him in the courthouse, you can unshackle  
25 him then. Are y'all comfortable with being able to  
26 handle that?

27 BY GUARDS: Yes, sir.

28 BY THE COURT: All right.

29 BY MR. BILLY GILMORE: Of course, he is sitting

1 here right now with leg irons on.

2 BY THE COURT: I understand. We will take care  
3 of that, Mr. Gilmore.

4 (Guards remove leg irons from the Defendant.)

5 BY MR. BILLY GILMORE: All right, sir. And the  
6 other motion would be that the Defense would move to  
7 keep the State or any of the witnesses referring to  
8 any other crimes that may or may not have been  
9 committed at the same time. That would be more  
10 specifically the capital murder indictments on the  
11 other three charges, any reference in voir diring the  
12 jury, any reference by any witness, any reference by  
13 the State since we have previously made a motion  
14 consolidating and the Court has overruled that, and I  
15 think it would be highly prejudicial if the State  
16 were able to put on all their proof in one case when  
17 it's actually four cases. So we would ask the Court  
18 to grant an order restricting not only the State but  
19 the witnesses referring to the other three  
20 indictments and any evidence involving those three  
21 cases.

22 BY THE COURT: I don't think they are going to  
23 introduce evidence as to the other indictments. I  
24 wouldn't anticipate that they were going to do that.  
25 I think of necessity there is going to have to be  
26 some testimony about there were three other folks  
27 laying on the floor there. Brock v. State authorizes  
28 that to a limited extent, to the point that you have  
29 to put it on to be able to prove what happened so the

1 jury will know what happened. I do, I will say  
2 this. I'm going to limit it to that. I don't want  
3 an extensive examination concerning the other folks  
4 that are on-- the other victims. I want the State to  
5 do that as minimally as possible. But Brock is--

6 BY MR. HORAN: --At the previous hearing on the  
7 motion hearings, Judge, we had the discussion that we  
8 weren't going to introduce any unnecessary autopsy  
9 photographs and stuff like that. And I think the  
10 Court ruled then that to that extent the State, that  
11 you would rule today or before the trial as to the  
12 evidence of other crimes. I think we provided you  
13 some authority, I believe, when we argued that  
14 motion.

15 BY THE COURT: Well, Brock says you are  
16 entitled; if it's so interrelated that you can't  
17 separate it out, you can do that. Now autopsy  
18 photographs of the other victims would not be  
19 admissible.

20 BY MR. EVANS: Your Honor, at some point - and  
21 we can argue that when we get ready to introduce them  
22 - there may be a couple of other autopsy photographs  
23 that may be admissible because they may end up  
24 showing some physical evidence in this particular  
25 case. But we will make sure we bring those to the  
26 Court's attention before we try to offer them. Also,  
27 while we are in here because some of this may come  
28 out on voir dire; I'm not sure if the Defense's  
29 motion covers this or not, but there is also going to

1 be proof that comes out about another crime, that  
2 crime being the Defendant stealing the gun that was  
3 used in the murder.

4 So I just wanted to bring that to the Court's  
5 attention, and I think the Court at some point,  
6 probably even before voir dire, is going to need to  
7 rule on that, the admissibility of that, prejudicial  
8 or probative values of it. In this particular case  
9 we are going to be able to prove through expert  
10 testimony what weapon was used to kill the victims in  
11 the store. We are also going to be able to prove by  
12 testimony of the owner of the gun that his gun was  
13 stolen that morning; also by an eye witness that  
14 worked at the factory that this Defendant was  
15 standing beside the car that the gun was stolen out  
16 of.

17 So it's going to be a necessary element to prove  
18 him in proximate connection with the gun that was  
19 stolen that was later used in the murders in a matter  
20 of 30 minutes or an hour or so later.

21 BY MR. BILLY GILMORE: Your Honor, it is my  
22 understanding there is no actual proof that the  
23 Defendant stole the gun. It is circumstantial; they  
24 put him in the vicinity, but there is no proof.

25 BY THE COURT: Well, as long as y'all don't make  
26 allegations that he stole it, I don't see -- I mean  
27 you have got the circumstantial evidence of how he  
28 got it, and the jury can draw whatever conclusions  
29 they want to out of that. I don't think there is

1 going to be any problem about the admissibility of  
2 that. I don't see the necessity of anybody going  
3 into that on voir dire. What would be the necessity  
4 of that?

5 BY MR. EVANS: Voir dire, probably not. Opening  
6 statements, we are probably going to need to go  
7 through all of it to let the jury know what they are  
8 expected to see.

9 BY THE COURT: Well, as you know, I explain to  
10 the jury on the front end that opening statements are  
11 not evidence and that they cannot accept it as  
12 evidence. Let me go back one thing too that I think,  
13 and I will make this ruling firm later. But in  
14 relation to this motion about the other victims and  
15 stuff like that, I think it's necessary that I give a  
16 limiting instruction. I'm not a hundred percent  
17 positive about that, but the case law would indicate  
18 that there needs to be a limiting instruction when  
19 that comes in, and I'm going to give one in that  
20 case.

21 BY MR. EVANS: Yes, sir.

22 BY THE COURT: If it comes in, which I  
23 anticipate it probably will.

24 BY MR. BILLY GILMORE: Back to the gun issue,  
25 Your Honor, we would ask that the State not refer to  
26 the Defendant stealing the gun period.

27 BY MR. HORAN: That is going to be impossible,  
28 Your Honor.

29 BY MR. EVANS: Yeah, it is. We are going to



1 have to show that the gun was stolen that morning,  
2 and the proof itself is going to show that he is the  
3 one that stole the gun.

4 BY THE COURT: I think you're entitled to show  
5 that the gun was stolen, and then the proof will have  
6 to speak for itself.

7 BY MR. HORAN: It's their argument that it  
8 wasn't, that he didn't steal it, but it's ours that  
9 he did--

10 BY MR. EVANS: --Of course, our argument is  
11 going to have to be that he did steal it.

12 BY MR. BILLY GILMORE: But he is not here  
13 charged with a larceny of a gun. If there is direct  
14 testimony that he stole it, fine. But if it's not,  
15 you know, we object to the State putting on any--

16 BY THE COURT: --Well, you are entitled to draw  
17 inferences from the proof.

18 BY MR. BILLY GILMORE: Yes, sir, but I don't  
19 want the State to get on there and make a reference  
20 that the Defendant stole the gun.

21 BY MR. EVANS: Well, it's--

22 BY THE COURT: --Well, he can't until such time  
23 as he has proven that.

24 BY MR. EVANS: Yes, sir.

25 BY MR. HORAN: Or the inference could be drawn  
26 from the proof that he did.

27 BY THE COURT: Well, that would be proof.

28 BY MR. BILLY GILMORE: It's a jury to decide  
29 that.



1 BY MR. HORAN: Right; exactly.

2 BY THE COURT: They are also going to get an  
3 instruction that he is only charged with capital  
4 murder and that they are to disregard any evidence of  
5 any other criminal activity on his part. I'm going  
6 to specifically instruct them along that which will  
7 cover the other victims and the gun too.

8 BY MR. EVANS: Is that all?

9 BY MR. BILLY GILMORE: Judge, in your  
10 instruction in regard to the other crimes, are you  
11 going to make any explanation to the jury why?

12 BY THE COURT: I'm going to pretty well  
13 probably, in all likelihood with one change going to  
14 give the instruction that is in Brock v. State. I  
15 have one problem with that in that it talks about  
16 criminal activity. I'm going to say possible  
17 criminal activity. Other than that, I think I will  
18 probably give that one unless y'all have got a better  
19 one which I will be glad to listen to about next  
20 week.

21 BY MR. BILLY GILMORE: And something else, Your  
22 Honor, we need to maybe know up front. I understand  
23 the State has videos, has slides, have photographs,  
24 and I see they have a projector set up out there.  
25 And I understand that the slides are the same as the  
26 pictures, and I would like to know which they intend  
27 to use.

28 BY THE COURT: They may intend to use both. If  
29 they do, my ruling was going to be that they can't,

1           that they are entitled to have something to hand to  
2           the jury. You know they can show it on the wall and  
3           hand it so they can look at it up close too. I don't  
4           see any prejudicial effect to that.

5           BY MR. EVANS: We intend, as I am sure the Court  
6           knows, to do like we normally do with the pictures  
7           and the slides.

8           BY THE COURT: I anticipate what y'all are going  
9           to do is you are going to show the slide, and you are  
10          going to have the picture identified as the same  
11          thing and ask that both be marked and that one be  
12          handed to the jury.

13          BY MR. EVANS: Yes, sir.

14          BY THE COURT: I do not see any prejudicial  
15          effect of that.

16          BY MR. BILLY GILMORE: Well, Your Honor, if they  
17          are going to use the pictures, then, of course, we  
18          would object to the use of the slides.

19          BY THE COURT: Okay, well, you can object at  
20          that time.

21          BY MR. BILLY GILMORE: Yes, sir.

22          BY MR. JOHN GILMORE: What about the video? Are  
23          y'all going to admit the video?

24          BY MR. EVANS: We will just have to start in the  
25          trial and see what we are going to use. It's out  
26          there to use if we decide to. It's hard to say for  
27          sure what all we are going to use yet.

28          BY MR. BILLY GILMORE: Your Honor, one other  
29          thing that we have problems with; of course, I

1 understand the gun has never been recovered.

2 BY THE COURT: Has what?

3 BY MR. BILLY GILMORE: Has never been recovered.

4 BY THE COURT: The gun hasn't?

5 BY MR. BILLY GILMORE: That's right.

6 BY THE COURT: Well, how is there going to be a  
7 ballistics test?

8 BY MR. BILLY GILMORE: That's my question right  
9 there, Judge--

10 BY MR. EVANS: --Your Honor, what we have got in  
11 this particular case, we have got the owner of the  
12 gun. They carried officers both from my department  
13 and the Highway Patrol to where he had target  
14 practiced with the gun.

15 BY THE COURT: Matching the hulls?

16 BY MR. EVANS: And the Crime Lab is going to  
17 positively match those projectiles to those from the  
18 scene.

19 BY THE COURT: We will cross that bridge when we  
20 get there.

21 BY MR. BILLY GILMORE: But on the other hand, of  
22 course, they--

23 BY THE COURT: --Let's make that argument when  
24 we get there. That is down the road.

25 BY MR. BILLY GILMORE: All right.

26 BY MR. JOHN GILMORE: I think that's all, Your  
27 Honor.

28 BY MR. HORAN: You have anything, Doug?

29 BY MR. EVANS: Not at this point.

1 BY MR. BILLY GILMORE: For convenience, I think,  
2 of everybody, Judge, if we could kind of know kind of  
3 how the State is going to proceed; I mean how many  
4 witnesses do they feel like they are going to use a  
5 day where we can get our witnesses in place.

6 BY THE COURT: I've got no way-- I'm not going  
7 to limit either one of y'all. I'm not going to put  
8 y'all under that restriction or the State. You have  
9 just got-- it's a trial, and if it inconveniences  
10 witnesses, it just has to inconvenience witnesses.  
11 It is inconveniencing everybody else, so they just  
12 have to be here. If they have got to stay all week,  
13 they have got to stay all week.

14 BY MR. JOHN GILMORE: What about when the State  
15 rests? I'm assuming it's going to depend on the time  
16 of day. Are you going to want us to anticipate when  
17 they are going to rest so that we will have our  
18 witnesses there?

19 BY THE COURT: I think as this goes along, by  
20 the time they get pretty close to it, I think they  
21 are going to be able to tell both of us, and it would  
22 be helpful to me if y'all, when you get within two or  
23 three witnesses of being able to do it, you will  
24 know. And if you will let me know, then we will go  
25 from there. And if they rest at 2 o'clock, we are  
26 going to take about 30 minutes, and we are going to  
27 start with y'all.

28 BY MR. BILLY GILMORE: One other thing too, Your  
29 Honor, dealing with the witnesses; we would ask the

1 Court to separate any investigative officers from the  
2 regular witnesses.

3 BY THE COURT: I'm going to put all the  
4 witnesses under the instruction that they cannot  
5 discuss their testimony with anybody else. I don't  
6 see any necessity to separate them. If they haven't  
7 talked to them by now, they are not going to talk to  
8 them after this. It won't make any difference.

9 BY MR. BILLY GILMORE: For the record, the  
10 reason I was requesting this, I know there has been  
11 some officers that have been kind of brow beating  
12 some witnesses in insinuating to say this or say  
13 that, and I don't--

14 BY THE COURT: --Well, my understanding is that  
15 is happening on both sides. Whether that is true,  
16 whether my information is true, I don't know. All I  
17 can do is instruct them that they cannot discuss  
18 their testimony with anybody else. Other than that,  
19 they all go in the same room. If they violate that  
20 rule, then they have got to deal with me.

21 BY MR. EVANS: Judge, there is one other thing  
22 that I want to bring up for about the fifteenth  
23 time. We are here ready to start trial. We have no  
24 discovery that has been furnished to us other than a  
25 few names. It has been brought to my attention and I  
26 don't know whether it's true or not, but it has been  
27 brought to my attention that the Defense Counsel has  
28 been questioning witnesses and tape recording those  
29 statements. If that is true, not only do I strongly

1 object, but I demand a copy of those tapes or a  
2 transcript or something so that we know what they  
3 have got.

4 BY MR. BILLY GILMORE: Your Honor, I can respond  
5 to that. We have been interviewing witnesses from  
6 time to time. We have not made any tapes. We have  
7 made no kind of recording of any kind.

8 BY MR. HORAN: Or--

9 BY MR. BILLY GILMORE: We haven't taken down any  
10 written statements.

11 BY THE COURT: Everything you have gotten from  
12 them has been oral; is that right?

13 BY MR. BILLY GILMORE: That's correct.

14 BY MR. JOHN GILMORE: Also, for the record the  
15 State has subpoenaed some witnesses that were on  
16 their list, but we have had no summary or synopsis or  
17 written statement of what some of their witnesses--

18 BY THE COURT: I don't know that the rules  
19 require a summary. I don't know where everybody came  
20 up with this. You are entitled to any written stuff  
21 that they have got, written statements, and the same  
22 way that I was going to require of y'all that you  
23 had, whatever written stuff you made concerning those  
24 statements furnished to both sides. But there is  
25 nothing in the rules that says you are entitled to a  
26 summary of witnesses.

27 BY MR. HORAN: They have to be in chief  
28 witnesses anyway. The ones they are referring to may  
29 or may not be rebuttal witnesses; I don't know.

1 BY MR. BILLY GILMORE: There is one other thing  
2 too. I understand there has been some witnesses  
3 subpoenaed that is not on the State's witness list.

4 BY MR. EVANS: We haven't subpoenaed any that is  
5 not on the witness list.

6 BY THE COURT: Well, in that case that would be  
7 a discovery violation, and you can raise that  
8 objection at that time.

9 BY MR. EVANS: Your Honor, also, and this may  
10 not be the proper time, but I would like to go ahead  
11 and request. I understand that the Defense had  
12 requested approximately 25 blank subpoenas, and if  
13 they have issued any of those subpoenas to anyone  
14 other than the witnesses they furnished, I would like  
15 to know this morning so we can be prepared.

16 BY MR. BILLY GILMORE: We have not issued any at  
17 this time.

18 BY THE COURT: You have issued none?

19 BY MR. BILLY GILMORE: None.

20 BY THE COURT: Or you didn't issue any--

21 BY MR. BILLY GILMORE: None.

22 BY THE COURT: Okay.

23 BY MR. BILLY GILMORE: We requested blank  
24 subpoenas, and we are going to try to issue them, and  
25 we will be glad to provide the State with that  
26 information when we issue them. We didn't know, we  
27 didn't want to bring them up here today to stay for a  
28 week or two weeks. And as we go along and we know  
29 kind of how we are progressing, then we will probably

1 issue some subpoenas.

2 BY MR. EVANS: That's all the State has got at  
3 this point, Your Honor.

4 BY MR. JOHN GILMORE: That's all the defense  
5 has, Your Honor.

6 BY THE COURT: Okay, we will get started in  
7 about fifteen minutes.

8 (WHEREUPON, THE COURT, ALL COUNSEL AND THE  
9 DEFENDANT WENT INTO OPEN COURT WHERE THE JURY PANEL  
10 WAS DULY QUALIFIED WITHOUT OBJECTION, AND A RECESS  
11 WAS TAKEN FOR THE CLERK TO PREPARE A LIST OF ALL  
12 QUALIFIED JURORS. FOLLOWING THE RECESS, VOIR DIRE  
13 PROCEEDED IN OPEN COURT WITH ALL COUNSEL AND THE  
14 DEFENDANT BEING PRESENT AS FOLLOWS:)

15 BY THE COURT: I'm going to have to shuffle  
16 y'all around a little bit now, I think. I'm going to  
17 seat everybody. I'm going to call your name, and I'm  
18 going to seat you starting on the first row, and when  
19 you're seated -- we have got the numbers? Wait a  
20 minute. I lost everybody.

21 (Clerk entered the courtroom.)

22 BY THE COURT: I'm going to ask you if y'all  
23 will on this side, if you will kind of get up and  
24 kind of move back, and I will call your name, and as  
25 I do, come around and be seated over here. (To the  
26 Bailiffs) I ask you to seat them in order.

27 BY THE BAILIFF: Your Honor, how many do you  
28 want to put on to a row?

29 BY THE COURT: Eight. Billie M. Jones.



1 (THE REST OF THE NAMES ON THE JURY LIST WERE  
2 CALLED UP AND THEY WERE SEATED IN ORDER WITH NUMBERS  
3 PLACED ON THEIR LAPELS. JUROR NUMBER 53, JOHN LOUIS  
4 COTHAM, WAS EXCUSED FOR AGE BUT WAS MISTAKENLY PLACED  
5 ON THE LIST. AT THE CONCLUSION OF THE CALL OF NAMES,  
6 ONE MAN RAISED HIS HAND THAT HIS NAME WAS NOT CALLED,  
7 UPON WHICH THERE WAS THE FOLLOWING:)

8 BY THE COURT: His name is what?

9 BY THE CLERK: Gary Dye. Gary Dye.

10 BY THE COURT: D-Y-E? Gary Dye. Is that  
11 everybody?

12 BY THE CLERK: He will be number 98.

13 BY THE COURT: Ladies and gentlemen, the next  
14 thing we are going to do in this trial is called the  
15 voir dire examination. And we are not going to do it  
16 until 1 o'clock, but let me give you a little idea of  
17 what it's about, and I will talk more about it at 1  
18 o'clock. Basically, I have got to ask you some  
19 questions, and all the lawyers will have a chance to  
20 ask you some questions, the sole purpose being to get  
21 a fair and impartial jury in this case. There are  
22 certain relationships or things that may have  
23 happened to you in life that you might be a fair and  
24 impartial juror in this case but maybe not in the  
25 next case or vice versa. And that's the only reason  
26 we ask these questions. None of the questions are  
27 for the purpose of unduly prying into your private  
28 lives or embarrassing you in any way. I won't do  
29 that, and I won't allow the lawyers to do that.

1           There are going to be some pertinent relationships  
2           and things that have happened to you in your life  
3           that we will need to know about. We won't need to  
4           know about the facts of them necessarily, but just in  
5           general, some things that have happened to you. Like  
6           I say, I will go into that in depth later.

7           What I'm going to ask you to do, I'm going to  
8           let you go until 1 o'clock. I'm going to ask that  
9           you be back at 1 o'clock and that you look to your  
10          left and right and see who you are sitting by, and if  
11          y'all will keep your numbers on and come back and be  
12          seated right where you are at 1 o'clock, we will get  
13          started with the voir dire this afternoon.

14          Now, of course, y'all have heard nothing about  
15          this case whatsoever as far as from the witness  
16          stand. You are not entitled to form any opinions  
17          about the case, and you are not entitled to discuss  
18          it amongst yourselves or with anybody else. There  
19          might be, there might be some media coverage on this  
20          at lunch on the radio or television or something like  
21          that. You are not to-- if that should happen, you  
22          are not to-- well, you turn the television or the  
23          radio off. You are not to listen to any of that  
24          stuff during this trial and during this afternoon.  
25          Most of you will be gone by the time the afternoon is  
26          over. But none of you should listen to anything on  
27          the media about it. You should not allow anybody to  
28          talk to you about this matter or approach you. If  
29          somebody does approach you or try to talk to you

1 about this case or in your presence, you let me know  
2 when you come back at 1 o'clock.

3 Any of the lawyers have any other instructions  
4 for the jury?

5 BY MR. EVANS: None from the State.

6 BY MR. BILLY GILMORE: None, Your Honor.

7 BY THE COURT: Ladies and gentlemen, I will see  
8 y'all at 1 o'clock.

9 (FOLLOWING THE NOON RECESS ON OCTOBER 13, 1997,  
10 FROM 12:00 TO 1:00 P.M., PROCEEDINGS CONTINUED IN  
11 OPEN COURT WITH ALL COUNSEL AND THE DEFENDANT  
12 PRESENT:)

13 BY THE COURT: The Court calls cause number  
14 CR97-369, State of Mississippi versus Curtis Giovanni  
15 Flowers. What says the State?

16 BY MR. EVANS: The State of Mississippi is ready  
17 for trial, Your Honor.

18 BY THE COURT: What says the Defendant?

19 BY MR. JOHN GILMORE: We are ready, Your Honor.

20 BY THE COURT: Ladies and gentlemen, as  
21 promised, I'm going to do the voir dire examination  
22 now, or I'm going to start it. The lawyers are going  
23 to participate too. I'm going to get down there  
24 closer to you, so I can see you so y'all can hear  
25 me. The first thing I'm going to ask you to do is I  
26 need for all of you to stand up and raise your right  
27 hand.

28 (Jurors stand and raise right hand.)

29 BY THE COURT: You and each of you do solemnly

1 swear or affirm that you will truly answer, with a  
2 true answer make to all questions propounded to you  
3 by the Court and under its direction touching your  
4 qualifications as a juror in this case, so help you  
5 God?

6 BY ALL PROSPECTIVE JURORS: I do.

7 BY THE COURT: All right, you may be seated.

8 VOIR DIRE EXAMINATION BY THE COURT:

9 As I told you before, what this is in the trial is an  
10 attempt to get a fair and impartial jury to try this case and  
11 one that will be fair and impartial for both sides. To that  
12 end, I'm going to have to ask you some questions, and it's  
13 important that you answer them truthfully. And that is not to  
14 say that anybody in here would answer them any other way, but  
15 you must think about these answers, and you must give me  
16 complete answers because if you fail to answer a question, it  
17 creates a problem. In other words, if something applies to you  
18 and you don't answer it and it's found out later, it can give  
19 us a problem. So I need to know the answers. There are no  
20 wrong answers. If these things apply to you, you just need to  
21 raise your hand and let me know about it. And I will try to  
22 stress, there are some questions that are more important than  
23 others, and I will try to stress those questions to you as we  
24 go along.

25 But if I pass over a question and we go on down the  
26 road and even if we get into where the lawyers are asking you  
27 questions, and all of a sudden you remember the first question  
28 I asked you applied to you, then you hold your hand up and call  
29 my attention back to it, and we will go over it again. As I

1 say, there are no wrong answers unless you fail to answer.  
2 That's the only wrong answer that you can give.

3 In this case the State of Mississippi is represented  
4 by Doug Evans, Kevin Horan, and Walter Bleck. Where is Mr.  
5 Bleck?

6 BY MR. HORAN: He is out of the courtroom at  
7 this time.

8 BY THE COURT: Well, he is the other assistant.  
9 These are the two gentlemen that will be trying this case. Mr.  
10 Evans is the District Attorney. Mr. Horan is his assistant.  
11 The Defendant is represented by John Gilmore of Durant and  
12 Billy Gilmore, his father, from Lexington. Are any of you  
13 related by blood or marriage to any of the attorneys in this  
14 case? Any of you know them or ever even heard of them? (No  
15 response).

16 I take it since you don't, that none of you have ever  
17 been represented by any of them? Now Mr. Evans at one time was  
18 in private practice in Grenada. Anybody been represented by  
19 any of these attorneys? Have any of you been in a case where  
20 you were on the other side, the attorneys were on the other  
21 side from you? In the case of the District Attorney, that  
22 would mean where he prosecuted you or any member of your  
23 family. Yes, ma'am. That is number 7.

24 A. (By Juror Ms. Linda Enfinger) Yes.

25 Q. Ms. Enfinger?

26 A. Yes.

27 Q. All right.

28 A. My son was brought before the Youth Court here in Lee  
29 County, but, I mean, you know, it wasn't no conviction but I

1 was--

2 Q. Okay, but that wouldn't have been Mr. Evans. None of  
3 these lawyers were in that; is that right?

4 A. No.

5 Q. Is there anything about that fact that would affect  
6 you in this matter?

7 A. No, sir.

8 Q. Okay. Anybody else?

9 Okay, the Defendant in this case is Curtis Flowers.  
10 Mr. Flowers, if you would stand. Are any of you related by  
11 blood or marriage to Mr. Flowers? Any of you know him? (No  
12 response).

13 Okay, now this is one of those important questions  
14 that I have to ask you, and you need to think about this  
15 because it goes back to relationships you might have had which  
16 may be 30 or 40 years old. One lady answered it one time in a  
17 case that I had; she remembered that her great, great  
18 grandfather had been Sheriff in Montgomery County or Grenada  
19 County, somewhere like that, in 1875. Well, that counts, and I  
20 need to know if any of you-- well, first let me know are any of  
21 you members of law enforcement, presently serving as a law  
22 enforcement officer? All right, that is number 14. That is  
23 Mr. Sumner?

24 A. (By Juror Mr. Charles Alston Sumner) Yes, sir.

25 Q. Okay, Mr. Sumner, where are you in law enforcement?

26 A. I am an agent with the Alcohol Beverage Control.

27 Q. All right, you are located in Lee County?

28 A. Yes, sir.

29 Q. Is there anything-- how long have you been an agent?

1 A. Going on 17 years.

2 Q. Is there anything about that fact that would keep you  
3 from being a fair and impartial juror in this case?

4 A. No, sir.

5 Q. You could base your decision on the evidence as you  
6 see it, as it comes from the witness stand?

7 A. Yes, sir.

8 Q. Okay. By being in law enforcement, have you heard  
9 anything about this case?

10 A. No, sir, not other than the news.

11 Q. In the context of the law enforcement you have not?

12 A. No, sir.

13 BY THE COURT:

14 Q. Okay. I have got another hand back there. Right  
15 there; yes, sir.

16 A. (By Juror Mr. Kenneth H. Valentine) Yes, sir, county  
17 probation service.

18 Q. D.O.C.?

19 A. Department of Corrections. I am a field officer, and  
20 as such, I am a certified law enforcement officer in my  
21 capacity.

22 Q. Okay. I can't see your number, sir?

23 A. 62.

24 Q. Okay, now Mr. Valentine, is there anything about the  
25 fact that you are in law enforcement or you are a correctional  
26 officer that would affect you in any way in this matter and  
27 keep you from being a fair and impartial juror in this case?

28 A. No, sir.

29 Q. Have you heard anything about this case in the

1 capacity as law enforcement officer?

2 A. No, sir.

3 BY THE COURT:

4 Q. Okay, all right, back here. Yes, sir-- I'm sorry,  
5 yes, ma'am. I apologize; my eyes are not what they used to  
6 be. What number is that, please, ma'am?

7 A. (By Juror Ms. Jennie Lou Buchanan) 89.

8 Q. All right. Ms. Buchanan?

9 A. Yes, sir.

10 Q. Okay, you work for the Lee County Sheriff's  
11 Department; is that correct?

12 A. Yes, sir.

13 Q. What do you do for them?

14 A. Booking and park. I'm a jailer.

15 Q. You're a jailer, okay. Is there anything about that  
16 fact that would affect you in this matter?

17 A. Yes, sir.

18 Q. Being a fair and impartial juror?

19 A. Yes, sir.

20 Q. It would. Thank you, ma'am.

21 BY THE COURT: Okay, anybody else? Now, how  
22 many of you have relatives that are--

23 BY MR. JOHN GILMORE: --Excuse me, Judge--

24 BY THE COURT: --in law enforcement?

25 BY MR. JOHN GILMORE: Excuse me, Your Honor. I  
26 believe there was a lady right there that was fixing  
27 to raise her hand.

28 BY THE COURT: Okay, I'm sorry. Who-- yes,  
29 ma'am.



- 1 A. (BY UNIDENTIFIED FEMALE JUROR) You just did it.
- 2 Q. Okay, all right. Relatives in law enforcement.
- 3 Let's see. Okay, number 5, who is Mr. Beard?
- 4 A. (By Juror Mr. David Lee Beard) Yes.
- 5 Q. Who do you have?
- 6 A. I have a cousin James Beard. I believe he is retired
- 7 now here recently, but he was with Tupelo Police Department.
- 8 Q. Okay, is there anything about that fact that would
- 9 keep you from being a fair and impartial juror in this case?
- 10 A. No, sir.
- 11 Q. And the question, of course, I'm asking you is would
- 12 you give-- if some law enforcement officers were to testify in
- 13 this case, would you give their testimony more credence just
- 14 because they are law enforcement officers?
- 15 A. No, sir.
- 16 Q. Okay, thank you, Mr. Beard. Yes, sir; number 11?
- 17 A. (By Juror Mr. Bruce Allen Owen) What about ex-
- 18 brother-in-laws?
- 19 Q. That will work.
- 20 A. I have got one.
- 21 Q. Where is he in law enforcement?
- 22 A. Mr. Valentine.
- 23 Q. Mr. Valentine, okay. Okay, is there anything about
- 24 that fact that would keep you from being a fair and impartial
- 25 juror?
- 26 A. No, sir.
- 27 Q. And he is a brother-in-law, you say?
- 28 A. Ex-brother-in-law.
- 29 Q. Ex-brother-in-law. (Audience laughs.) Let me take

1 that a little further. Let's say y'all both ended up on the  
2 jury at the same time. Is there anything about that  
3 relationship would keep you from having an independent mind?

4 A. No.

5 Q. Could you make up your own decision in that case?

6 A. Yes, sir.

7 Q. Wouldn't be influenced by him one way or another?

8 A. No, sir.

9 Q. Mr. Valentine, let me ask you that same question. If  
10 y'all ended up on the same jury, would anything about that  
11 relationship or the relationship you had affect you one way or  
12 another, good or bad?

13 A. (By Juror Mr. Kenneth H. Valentine) No, sir.

14 Q. You could use your own independent judgment and  
15 consult with fellow jurors and make up your own mind on this  
16 case?

17 A. Yes, sir.

18 Q. Thank you, sir. All right, yes, sir. Well, I'm  
19 going to get out of line, and I'm going to lose where I am.  
20 Let's go, let's see third row. Yes, ma'am. I'm sorry; what's  
21 your number, ma'am?

22 A. (By Juror Mrs. Thomas S. Williams) 24. Do we have to  
23 go into ex's?

24 Q. Well, you don't have to go into it, but I need, I do  
25 need to know it. But I don't need to know anything other than  
26 that fact and that relationship.

27 A. Ex-son-in-law.

28 Q. Ex-son-in-law, all right. That is Ms. Williams?

29 A. Yes.

1 Q. Okay, how long ago was that, Ms. Williams?

2 A. How long has he been an ex?

3 Q. (Laughter) No, ma'am. How long has he been in law  
4 enforcement?

5 A. He is Tupelo Police Department.

6 Q. He is still in the Tupelo Police Department. Would  
7 anything about that affect you one way or another in relation  
8 to officers testifying or anything like that or in any way?

9 A. No.

10 Q. Okay, thank you, ma'am.

11 Yes, ma'am; that is number 1. Ms. Jones.

12 A. (By Juror Ms. Billie M. Jones) Jones. Ex-  
13 father-in-law now deceased was with the Sheriff's Department in  
14 Leflore County when I lived in Greenwood.

15 Q. Would that fact affect you in any way in this matter?

16 A. No, sir.

17 Q. Thank you. Let's see. Right here?

18 A. (By Juror Mr. Jerry M. Keeton) A couple of uncles  
19 are former sheriff in Prentiss County. Sewell Martin in '48  
20 through '52 and then Ralph Martin in about the latter part of  
21 the 60's.

22 Q. Okay, that is Mr. Keeton?

23 A. That's correct.

24 Q. Okay, Mr. Keeton, would that affect you in any way in  
25 this matter?

26 A. No, sir.

27 Q. Okay, thank you. Yes, sir; that is number 33.

28 A. (By Juror Mr. Pat Riggs) It's really not law  
29 enforcement or it may be considered. My wife worked in the

1 County Attorney's office here in Lee County several years ago.  
2 She worked in the District Attorney's office in south Georgia  
3 six years ago. She was, that's where she--

4 Q. Would that affect you in any way in this matter?

5 A. It wouldn't have any effect.

6 Q. Now that is even a little bit further than the  
7 question I asked, but I would rather you over answer my  
8 question than under answer it. So I appreciate that, that you  
9 answered it that way. Yes, ma'am.

10 A. (By Juror Ms. Reba A. Floyd) I have a cousin that is  
11 Chief of Police in Saltillo.

12 Q. All right, and I can't see your number?

13 A. 56.

14 Q. 56, all right. Ms. Floyd?

15 A. Yes, sir.

16 Q. Okay, is there anything about that relationship that  
17 would affect you in this matter and keep you from being a fair  
18 and impartial juror?

19 A. No, sir.

20 BY THE COURT:

21 Q. Yes, ma'am; and 57?

22 A. (By Juror Ms. Gena Whitten Richardson) 55.

23 Q. Okay. I had two chances, and I knew I picked the  
24 wrong one. Ms. Richardson?

25 A. Uh-huh. My fiance' is a Tupelo police officer and  
26 instructor for the police academy.

27 Q. Would anything about that affect you in this matter?

28 A. It would.

29 Q. It would? Thank you, Ms. Richardson; I appreciate

1 that. You do not feel that you could be a fair and impartial  
2 juror?

3 A. No, I don't.

4 BY THE COURT:

5 Q. Yes, sir.

6 A. (By Juror Mr. William Bryan Green) I am a former  
7 police officer for ten years, but I do not feel that this would  
8 influence me in any way.

9 Q. All right, and that is number 54, Mr. Green; is that  
10 right?

11 A. Yes, sir.

12 Q. Okay.

13 BY THE COURT:

14 Q. Yes, ma'am?

15 A. (By Juror number 52, Ms. Leigh Dozier) Me? I have a  
16 cousin that is a policeman in Nettleton.

17 Q. Ms. Dozier?

18 A. Yes, sir.

19 Q. Would that affect you in this matter in any way?

20 A. No, sir.

21 Q. Okay, thank you.

22 BY THE COURT:

23 Q. Now there was a hand up here. 43?

24 A. (By Juror Ms. Kathryn W. Johnson) 43.

25 Q. Ms. Johnson.

26 A. My stepson is an investigator for Lee County  
27 Sheriff's Department.

28 Q. Okay, is there anything about that fact that would  
29 affect you in this matter in any way?

1 A. No, sir.

2 Q. Okay.

3 BY THE COURT:

4 Q. Let's go-- yes, ma'am. Number 42.

5 A. (By Juror Ms. Tina Black) I have an uncle who just  
6 retired at the first of the year, but he was a state  
7 investigator with the Highway Department.

8 Q. Highway Patrol? That is Ms. Black. If you don't  
9 mind, who is that? What was his name?

10 A. Sammy Peeples.

11 Q. Okay, is there anything about that fact-- was he  
12 located up here?

13 A. Well, he lives in New Albany.

14 Q. Is there anything about that would affect you in any  
15 manner, any way in this matter?

16 A. No, sir.

17 Q. Okay, thank you, ma'am.

18 BY THE COURT:

19 Q. Let's see. Ma'am or sir, I can't-- yes, sir. What  
20 is your number?

21 A. (By Juror Mr. David Wayne Lindley) 73.

22 Q. All right, sir.

23 A. I have a first cousin that is Tupelo Police  
24 Department.

25 Q. Tupelo City Police?

26 A. Yes.

27 Q. And that is Mr. Lindley?

28 A. Yes.

29 Q. Is there anything about that, Mr. Lindley, that would

1 affect you in any way in this matter?

2 A. No.

3 Q. Okay.

4 BY THE COURT:

5 Q. Yes, sir.

6 A. (By Juror Mr. Jimmy Lee Jones) 61.

7 Q. All right, sir.

8 A. I have a son works for the Mississippi State Highway  
9 Department.

10 Q. Works for the Highway Department?

11 A. He is a state trooper.

12 Q. He is a state trooper, okay. Is there anything about  
13 that, Mr. Jones, that would affect you in any way in this  
14 matter and keep you from being a fair and impartial juror?

15 A. Yes, it would.

16 Q. It would; all right. Thank you, sir. You do not  
17 feel that you could be a fair and impartial juror in this case;  
18 is that right?

19 A. Yes, sir.

20 Q. Thank you, sir.

21 BY THE COURT:

22 Q. Yes?

23 A. (By Juror Ms. Linda Edwards) 67.

24 A. That is Ms. Edwards.

25 A. I have a cousin, Joe Wheeler, City of Tupelo Police.

26 Q. Is there anything about that that would affect you in  
27 this matter and keep you from being a fair and impartial juror?

28 A. No.

29 Q. Thank you, ma'am.

1 BY THE COURT:

2 Q. Let's see. Yes, sir?

3 A. (By Juror Mr. Jimmy Dillard) My father was a former  
4 Tupelo Police Department, and I have a nephew that is with the  
5 Lee County Sheriff's Department now.

6 BY MR. BILLY GILMORE: What number, Your Honor?

7 A. 72.

8 Q. You are number 72?

9 A. Yes, sir.

10 Q. Okay, Mr. Dillard?

11 A. Yes, sir.

12 Q. Is there anything about that, Mr. Dillard, that would  
13 affect you in this way and keep you from being a fair and  
14 impartial juror?

15 A. No, sir.

16 Q. If I ask these questions over and over again, it's  
17 just because that's what I have to do. I try not to be any  
18 more repetitive than I have to.

19 BY THE COURT:

20 Q. Yes, ma'am?

21 A. (By Juror Ms. Pamela Jean Hale) Number 87.

22 Q. Okay.

23 A. My husband was the radio operator for Okolona, and  
24 that was probably about three years ago. I have a  
25 brother-in-law that is instructor at the academy in Jackson.

26 Q. For the Highway Patrol or the Law Enforcement  
27 Academy; is that right?

28 A. Yes, sir.

29 Q. That is Ms. Hale?



1 A. Yes, sir.

2 Q. Ms. Hale, is there anything about those relationships  
3 that would keep you from being a fair and impartial juror in  
4 this case?

5 A. No, sir.

6 BY THE COURT:

7 Q. Yes.

8 A. (By Juror Ms. Joyce N. McArthur) 92. My sister and  
9 brother-in-law are probation officers.

10 Q. They are what officers?

11 A. Probation officers.

12 Q. Okay, anything-- that is not Mr. Valentine, is it?

13 A. (Laughter) No.

14 Q. Anything about that relationship that would keep you  
15 from being a fair and impartial juror in this case?

16 A. No, sir.

17 BY THE COURT:

18 Q. Okay. Now another hand.

19 A. (By Juror Mr. Keith Allan Kent) My grandfather was a  
20 former federal marshal. Number 88.

21 Q. All right, sir. Mr. Kent?

22 A. Yes.

23 Q. Anything about that would keep you from being a fair  
24 and impartial juror in this case?

25 A. (Juror number 88 shakes his head indicating in the  
26 negative.)

27 BY THE COURT:

28 Q. Okay, yes, sir.

29 A. (By Juror Mr. James Edwin Page) 96. My daughter is a

1 sergeant with the Lee County Sheriff's Department. My  
2 son-in-law is a criminal investigator with the Lee County  
3 Sheriff's Department.

4 Q. Would that affect you in this case--

5 A. --no, sir--

6 Q. --and keep you from being a fair and impartial juror  
7 in this case?

8 A. No, sir.

9 BY THE COURT:

10 Q. All right, thank you. All these, when I ask you  
11 about being fair and impartial, you need to answer them with  
12 this in mind. As I told you earlier, the jury, the people who  
13 are picked on the jury to try this case will decide the facts  
14 in this case, and I will give you the instructions on the law.  
15 And under your oath as jurors, what you have to do, your oath  
16 means that you will try this case on the evidence as it comes  
17 from the witness stand and apply my instructions on the law to  
18 it at the end of the case. So when I ask if you are being a  
19 fair, can you be a fair and impartial juror, that fact is a  
20 part of that question, so that is really what I'm asking you.  
21 Now anybody else about law enforcement? Yes, ma'am. Number  
22 12?

23 A. (By Juror Ms. Sue Abernathy) Number 12, Abernathy.  
24 I have a nephew who was a law enforcement officer in Ittawamba  
25 County, but it would have no effect on me.

26 Q. But what?

27 A. It would not affect me.

28 Q. But it would not affect you, okay. Thank you.

29 BY THE COURT:

1 Q. Anybody else? Yes, ma'am.

2 A. (By Juror Ms. Marlene Denton) I have got a  
3 brother-in-law that was Sheriff in Calhoun County last year.

4 Q. Okay. Would that affect you in any way in this  
5 matter?

6 A. I believe it would.

7 Q. To be a fair and impartial juror?

8 A. I believe it would.

9 Q. Ma'am?

10 A. I believe it would.

11 Q. You think it would. What is your number, please,  
12 ma'am?

13 A. 30.

14 Q. 30?

15 A. 30.

16 Q. That is Ms. Denton?

17 A. Uh-huh.

18 BY THE COURT:

19 Q. Okay. Yes, ma'am. That is number 46?

20 A. 46.

21 Q. 46?

22 A. (By Juror Ms. Shelia Smith) Yes. I'm a case manager  
23 for a federal halfway house.

24 Q. Okay, so you are-- that would be kind of like being  
25 in the federal correctional system, I guess; is that right?

26 A. (Juror number 46 nods her head.)

27 Q. Are you a federal employee?

28 A. Yes.

29 Q. Okay. Would anything about that employment affect

1 you in any way in this matter and keep you from being a fair  
2 and impartial juror?

3 A. No.

4 Q. Thank you, ma'am. Anybody else?

5 BY THE COURT:

6 Okay, we touched on this while ago, but it  
7 happens a good bit and surprisingly more than I thought when I  
8 first started doing this. Are any of you kin to each other?  
9 Any of you got kin folks on this jury panel? (Several hands go  
10 up.) Okay, let's just start up here. Number 13.

11 A. (By Juror Ms. Edith Fikes) Fikes.

12 Q. That is Ms. Fikes. Ms. Fikes, who are you kin to?

13 A. Ralph Gray is my son-in-law.

14 Q. Okay, where is Ralph Gray?

15 A. (By Juror 71, Mr. Ralph Woody Gray) Right here.

16 Q. Okay, I'm going to ask both of y'all this question.  
17 If you were both selected to sit on this case, could you be an  
18 independent juror? Now what you are required to be as jurors  
19 is you are required to listen to the facts. When you go to  
20 deliberate your verdict, you are to, you are required to  
21 consult with your other jurors and then make up your own mind.  
22 You have to discuss it or there is an obligation to discuss it,  
23 and then after those discussions, you make up your mind. That  
24 doesn't mean you have got to change your mind or anything. You  
25 have to have an independent mind, and the question I'm asking  
26 you, Ms. Fikes and Mr. Gray, is if y'all were on that jury  
27 panel together, would one of you influence the other one, or  
28 could you both have an independent mind about it? Mr. Gray?

29 A. (By No. 71, Mr. Gray) I believe I could have an

1 independent mind.

2 Q. Ms. Fikes, you do too?

3 A. (By No. 13, Ms. Fikes) (She nods her head.)

4 Q. All right, thank you.

5 BY THE COURT:

6 Q. Now we had a bunch of other hands. Let's see where  
7 we are. Yes, ma'am; that is number?

8 A. (By Juror Ms. Rachel F. Foote) 16.

9 Q. 16, that is Ms. Foote. Who are you--

10 A. Foote. I am kin to Sherriel Ozburn. She is my  
11 cousin's wife.

12 Q. All right, where is Ms. Ozburn?

13 A. (Juror number 51, Sherriel Ozburn, raised her hand.)

14 Q. She is your cousin's wife, okay. I ask y'all the  
15 same question. Ms. Foote, would it affect you in any way in  
16 this matter?

17 A. (By Ms. Foote) I don't think so.

18 Q. Okay, I have, I have to have a more definite answer  
19 than that.

20 A. I would be afraid it would.

21 Q. You think it would.

22 A. It possibly--

23 Q. If she was going one way, you think you might have to  
24 go that way or maybe go another way?

25 A. Possibly.

26 Q. Okay. And I'm sorry; who was that kin to Ms. Foote?  
27 And that is number?

28 A. (By Juror Ms. Sherriel Ozburn) 51.

29 Q. Ms. Ozburn. How do you feel about it?

1 A. I could possibly be swayed.

2 Q. Okay.

3 BY THE COURT:

4 Q. Okay, all right; let's see where else. Right here;  
5 number 39?

6 A. (By Juror Mr. Thomas Kevin Barnett) Yes.

7 Q. And that is Mr. Barnett. Mr. Barnett, who are you  
8 kin to?

9 A. Reba Floyd and Frances Miller.

10 Q. All right, Reba Floyd and Frances Miller, where are  
11 they? (Two jurors raise their hands.) That is Ms. Floyd.

12 A. (By Juror Ms. Reba Floyd) Yes, sir.

13 Q. What is your number?

14 A. Number 56.

15 Q. 56?

16 A. Yes, sir.

17 Q. All right. And?

18 A. (By Juror Ms. Frances L. Miller) 35.

19 Q. Ms. Miller. Okay, let me ask, I will just ask it to  
20 the three of y'all. If you were, if one of you or I mean if  
21 two of you or all three of you were picked on the jury, would  
22 the fact that you are kin, would that relationship affect you  
23 and keep you from being an independent juror within the context  
24 of what I have talked about?

25 A. (By unidentified female juror) No, sir.

26 Q. You think, how about you?

27 A. (By unidentified juror) No, sir.

28 BY THE COURT REPORTER: Can they stand up? I  
29 couldn't get their responses.

1 BY THE COURT: All of them were no.

2 BY THE COURT:

3 Q. Okay, thank you. Anybody else? Yes, sir. What is  
4 your number, sir?

5 A. (By Juror Mr. Zabian Rowe) 83. I just need to use  
6 the rest room. (Laughter).

7 Q. I'm sorry; I couldn't hear you?

8 A. I need to use the rest room.

9 Q. Oh, okay. All right, go ahead. We will take just a  
10 minute.

11 (Juror number 83 left the courtroom and a female  
12 juror followed. Upon their return, the Court's voir dire  
13 continued as follows:)

14 BY THE COURT:

15 Q. Okay, anybody else that is kin? Anybody else that is  
16 kin that I have not gotten to? Yes, ma'am. Your number,  
17 please.

18 A. (By Juror Ms. Margery Pauline Pannell) Would be 40.  
19 Dale Franks.

20 Q. Number 40, Ms. Pannell?

21 A. Yes.

22 Q. Okay, and yes, sir; your number? 31.

23 A. (By Juror Mr. Monnie Dale Franks) 31.

24 Q. And that is Mr. Franks. I ask y'all the same  
25 question I have asked these others. Do you feel that you could  
26 set those relationships aside and be an independent juror and  
27 make up your own mind on this case after consulting with your  
28 fellow jurors?

29 A. (By Juror Mr. Franks) Yes, sir.

1 Q. All right, Mr. Pannell, how about you?

2 A. (By Juror Ms. Pannell) Probably.

3 Q. Okay, well, of course, I have to get a more definite  
4 answer from you. I need to know if-- it's okay. Like I say,  
5 there are no wrong answers, and you need to be independent  
6 jurors. By that I mean you have an absolute right and a duty  
7 to talk and discuss with your fellow jurors about what decision  
8 you may or may not make. But ultimately, you have to make up  
9 your own mind. In other words, just because he says I want to  
10 do this, will you just go along with him regardless of what the  
11 facts are?

12 A. (By Juror Ms. Pannell) No.

13 Q. Okay. I don't have, there is no problem about  
14 discussing it with relatives or anybody else on the jury. It's  
15 just that when you get down to it, you have to make up your own  
16 mind based on how you see it. Okay, anybody else? Did I miss  
17 anybody on that question? (No further response).

18 Now the way a case gets to this point is that a  
19 matter is presented to the grand jury. At a grand jury the  
20 State in almost all cases-- I mean there are some rare  
21 exceptions, but in almost all cases the State presents its side  
22 of the case. The defense puts on nothing whatsoever. The  
23 grand jury, which is made up of 20, usually around 20 people,  
24 they have to have 12 of them have to decide, one, whether they  
25 think that there has been a crime that has been committed and,  
26 two, whether or not they think there is enough evidence for a  
27 case to go to trial. The grand jury does not try a case. They  
28 do not decide guilt or innocence. They only decide whether we  
29 get to this point.



1           If they decide that we do, what they do is return an  
2 indictment. An indictment is only a formal piece of paper  
3 stating what the charge is so that the defendant can be  
4 notified that he has been charged. It is absolutely no  
5 evidence of guilt whatsoever. Is there anybody here that feels  
6 that just because the Defendant was indicted in this case that  
7 therefore he is guilty? Anybody feel that way? (A couple of  
8 hands go up.) All right, yes, sir. And that is?

9           A. (By Juror Mr. Beverly West Spencer) Spencer.

10          Q. What is that number, Mr. Spencer?

11          A. 49.

12          Q. 39?

13          A. 49.

14          Q. 49. Mr. Spencer, would it take sworn testimony to  
15 overcome that feeling that you have?

16          A. Sir?

17          Q. Would it take sworn testimony to overcome that  
18 feeling that you have?

19          A. It's there for good.

20          Q. Sir?

21          A. It's there for good.

22          Q. Okay, all right, sir.

23 BY THE COURT:

24          Q. Who else? I saw somebody else, another hand. What  
25 is that number and name?

26          A. (By Juror Ms. Jean Russell) 80.

27          Q. 80. Ms. Russell?

28          A. Yes, sir.

29          Q. Okay, do you feel that way, Ms. Russell, that it

1 would be, it would take sworn testimony to overcome that  
2 feeling?

3 A. I don't know.

4 Q. Okay, could I get you to stand up? I'm not singling  
5 you, but my court reporter can't hear you. Of course, I'm  
6 going to tell you; I'm telling you now that the indictment is  
7 no evidence of guilt whatsoever, and you must make your  
8 decision on the facts as they come from the witness stand, and  
9 you must apply my instructions on the law to that. And as I  
10 will tell you in a few minutes, the State, you must presume  
11 that the Defendant is innocent until such time as the State  
12 proves his guilt beyond a reasonable doubt. Now understanding  
13 that to be the law, do you still feel that it would take  
14 testimony to overcome your feelings about being indicted?

15 A. I don't know if I can be a fair and impartial juror.

16 Q. Okay, fine. And your number, I'm sorry, again? The  
17 number?

18 A. 80.

19 Q. Okay. Thank you, ma'am.

20 BY THE COURT: Okay, did I miss anybody on  
21 that? All right. In this case the indictment states that on  
22 or about the 16th day of July, 1996, in Montgomery County,  
23 Mississippi, Curtis Flowers did kill and murder one Bertha  
24 Tardy by shooting her with a pistol. Those are the charges.  
25 Has anybody-- let me say this. This has been known, it has  
26 been on the news media. It has been in all the papers, and I  
27 know it has been on Tupelo television. As far as I know, it  
28 has been on every television station in north Mississippi. The  
29 way they have described it was about these incidents occurring

1 or this incident occurring at a furniture store in Winona,  
2 Mississippi. Now having said that, how many of y'all have  
3 heard anything about this case? (Many hands go up.) Okay, I'm  
4 going to just go down row by row, and we will talk about that a  
5 little bit. Who on the first row?

6 Okay, Ms. Jones. Did you hear, did what you hear  
7 consist of news reports and television or newspaper?

8 A. (By Juror Ms. Billie M. Jones) Television.

9 Q. Did you have anybody that personally talked to you  
10 about it?

11 A. Nothing other than me and my husband.

12 Q. But y'all discussed it, but you-- let me rephrase  
13 that. There was nobody connected with this case or nobody that  
14 purported to know the facts that talked to you about it--

15 A. No.

16 Q. Is that correct? Did you form an opinion based on  
17 what you have seen on the television about this case, about the  
18 guilt or innocence of the Defendant?

19 A. No.

20 Q. Do you think that you could base your decision on the  
21 evidence as it comes from the witness stand and put those  
22 things that you have heard aside?

23 A. I do.

24 Q. Thank you, ma'am.

25 BY THE COURT:

26 Q. Anybody else on the first row. Number 7, all right,  
27 Ms. Enfinger.

28 A. (By Juror Ms. Linda Enfinger) Yes. I heard it on the  
29 news, on television, and I read it in the paper, and I work at

1 the hospital, and it was some talk, other people, you know,  
2 talking about this case.

3 Q. Like street talk though, gossip or something?

4 A. Yeah.

5 Q. Did any of those people that you heard talk, did they  
6 purport to actually know what happened, or did they just know  
7 -- y'all were just talking about what you heard on the  
8 television?

9 A. They were just talking about what they heard on the  
10 news.

11 Q. Okay. Did you form an opinion based on what you have  
12 heard?

13 A. No, sir.

14 Q. Okay. Do you think you could put aside what you have  
15 heard and base your decision today or this week on the evidence  
16 as you hear it from the witness stand?

17 A. Yes, sir.

18 Q. Thank you, ma'am.

19 BY THE COURT:

20 Q. That is number 4, Ms. Miller?

21 A. (By Juror Ms. Sharon Miller) Yes.

22 Q. All I have heard is some on the news, but it has just  
23 been recent like when they said that they were going to have  
24 the jury selection last month, when they sent out the notices.  
25 That's all I have really heard.

26 Q. Did you form an opinion based on what you had heard?

27 A. No, I haven't heard enough to know any of the  
28 details.

29 Q. Okay, Ms. Miller, you could base your decision then

1 on the evidence that you hear?

2 A. Yes.

3 Q. From the witness-- I mean, yeah, as you hear it from  
4 the witness stand. All right, thank you, ma'am.

5 BY THE COURT:

6 Q. Number 6, Ms. Poole?

7 A. (By Juror Ms. Lottie Poole) I have just heard it on  
8 the TV and read it in the newspaper.

9 Q. Did you form an opinion based on what you heard?

10 A. No, I didn't.

11 Q. Also, and there again, I'm going to have to ask this  
12 question over and over again, but I have to ask it  
13 individually, so I apologize ahead of time. But you could base  
14 your decision on the evidence as you hear it from the witness  
15 stand; is that correct?

16 A. Yes.

17 Q. Thank you, ma'am.

18 BY THE COURT:

19 Q. Let's go to the second row. Okay, let's start here  
20 with number 9.

21 A. (By Juror Mr. Card David Jackson) Newspaper.

22 Q. Okay. That is Mr. Jackson?

23 A. Yes, sir.

24 Q. Mr. Jackson, have you formed an opinion based on what  
25 you heard?

26 A. No, sir.

27 Q. Is there anything, I mean any reason you could not be  
28 fair and impartial, set aside what you heard?

29 A. Pardon?

1 Q. Could you set aside what you heard and be a fair and  
2 impartial juror?

3 A. Yes, sir.

4 BY THE COURT:

5 Q. All right. Number 10, Vanbuskirk?

6 A. (By Juror Ms. Carolyn Faye Vanbuskirk) Vanbuskirk.

7 Q. Vanbuskirk, okay.

8 A. Yes. My best friend has a brother-in-law who was  
9 related to the Tardy family.

10 Q. Okay.

11 A. So I have heard a lot of family talk through her.

12 Q. Okay, I understand. I don't want to know any facts,  
13 but I want to know did you hear, was that from somebody that  
14 purported to know what the facts were?

15 A. Yes.

16 Q. Obviously, they were close to her?

17 A. Her sister is married to this brother, foster  
18 brother. It's kind of a lengthy--

19 Q. Did you form an opinion based on what you heard?

20 A. Yes.

21 Q. Okay. You think it would take sworn testimony to  
22 overcome that opinion?

23 A. Yes.

24 Q. Thank you, ma'am.

25 BY THE COURT:

26 Q. All right. Yes, sir; number 11, Mr. Owen?

27 A. (By Juror Mr. Bruce Allen Owen) Yes, sir; television.

28 Q. Did you form an opinion based on that?

29 A. No, sir.

1 A. Yes, sir.

2 BY THE COURT:

3 Q. Yes, ma'am, and that is, I'm sorry?

4 A. (By Juror Mrs. Edith Fikes) 13.

5 Q. 13, Ms. Fikes.

6 A. I saw it on TV and newspaper.

7 Q. Okay, did you form an opinion based on what you have  
8 seen on television or read?

9 A. No.

10 Q. Do you think you could be a fair and impartial juror  
11 and set all that aside?

12 A. Yes.

13 Q. Thank you, ma'am.

14 BY THE COURT:

15 Q. Anybody else? Okay, the next row. Okay, let's go  
16 down here, number 18. Mr., I'm sorry?

17 A. (By Juror Mr. James Carl Repult, Jr.) Repult.

18 Q. Repult, okay.

19 A. On TV.

20 Q. Did you form an opinion based on what you saw or  
21 heard?

22 A. No, sir.

23 Q. Is there any reason that you could not be a fair and  
24 impartial juror and set that aside?

25 A. No, sir.

26 Q. Thank you.

27 BY THE COURT:

28 Q. All right, that is number 23. Ms. Townsend?

29 A. (By Juror Ms. Vanessa Townsend) Uh-hum. I heard it

1 Q. Do you think you could make your decision based on  
2 the evidence from the witness stand?

3 A. Yes, sir.

4 Q. Thank you.

5 BY THE COURT:

6 Q. Anybody else on the second row? Yes, ma'am, Ms.  
7 Foote?

8 A. (By Juror Ms. Rachel F. Foote) I heard it on  
9 television.

10 Q. And that's number, I'm sorry?

11 A. 16.

12 Q. 16. Did you form an opinion based on that?

13 A. Yes, sir. I did.

14 Q. Would it take sworn testimony to overcome that  
15 opinion?

16 A. I think I have my mind made up. I don't think it  
17 would be changed.

18 Q. Thank you, Ms. Foote.

19 BY THE COURT:

20 Q. I am sorry, number 14?

21 A. (By Juror Mr. Charles Alston Sumner) Yes, sir.

22 Q. Yes, sir. Mr. Sumner, you had indicated earlier that  
23 you had heard a little bit about it. But it was not from law  
24 enforcement, only from the media; is that correct?

25 A. Yes, sir; that's correct.

26 Q. Did you form an opinion based on what you heard?

27 A. No, sir.

28 Q. Do you think that you could make your decision based  
29 on the evidence as you hear it from the witness stand?



1 on TV.

2 Q. Did you form an opinion based on what you heard?

3 A. (Juror 23 shakes her head.)

4 Q. Ma'am?

5 A. Uh-uh.

6 Q. Do you think you could set aside what you heard or  
7 saw on television or read and be a fair and impartial juror in  
8 this case?

9 A. Yes, sir.

10 Q. Okay, thank you, ma'am.

11 BY THE COURT:

12 Q. All right, that is number 20?

13 A. (By Juror Ms. Kathy Lois Hodges) Yes.

14 Q. Ms. Hodges?

15 A. Yes.

16 Q. Television?

17 A. On TV Friday.

18 Q. Okay, on Friday you say? Okay, had you heard  
19 anything about it before then?

20 A. No.

21 Q. Is there anything about that fact-- well, have you  
22 formed an opinion?

23 A. No, I haven't.

24 Q. Is there anything that would keep you from being a  
25 fair and impartial juror in this case?

26 A. No.

27 Q. Thank you, ma'am. Let's go to the next row.

28 BY THE COURT REPORTER: Can you start getting  
29 them to stand?

1 BY THE COURT: Huh?

2 BY THE COURT REPORTER: They are getting far  
3 back. Can you have them to stand?

4 BY THE COURT:

5 Q. Okay, she can't hear you, so I'm going to get you to  
6 stand up, please, sir, if you will?

7 A. (By Juror Mr. Ellis Hall) I saw it on TV.

8 Q. All right, that is number 25, Mr. Hall.

9 A. That's right.

10 Q. Did you form an opinion, Mr. Hall?

11 A. No, I didn't.

12 Q. Do you think that you could put aside what you have  
13 heard or read about this matter and base your decision on the  
14 evidence as it comes from the witness stand?

15 A. I think I can.

16 Q. Thank you, sir.

17 BY THE COURT:

18 Q. Okay, let's see; that's number 29, Ms. Smith?

19 A. (By Juror Ms. Tracey Edwina Smith) Yes. My husband  
20 was driving a truck at the time to Winona back and forth every  
21 week, and he would just tell me what he had been told by some  
22 people down there, but I don't know if it was fact or not.

23 Q. Okay, do you think it was street talk or gossip or  
24 anything?

25 A. I am sure, probably.

26 Q. Okay, did you form an opinion based on your  
27 conversations with him?

28 A. No.

29 Q. Have you seen it on the television and all too?

1 A. No.

2 Q. Okay, is there anything about what you and your  
3 husband talked about or anything that you know about this case  
4 that would keep you from being a fair and impartial juror in  
5 this matter?

6 A. No.

7 Q. Thank you.

8 BY THE COURT:

9 Q. Okay, who else? Yes, sir, number 32, Mr. Keeton?

10 A. (By Juror Mr. Jerry M. Keeton) TV and newspaper, but  
11 I don't believe everything I read in the newspaper anyway.  
12 They are mostly rumors anyway.

13 Q. That is a good rule. I apologize to the news media  
14 that is here. Mr. Keeton, did you form an opinion based on  
15 that?

16 A. No, sir.

17 Q. Is there anything about that, what you have heard or  
18 read, that would keep you from being a fair and impartial juror  
19 in this case?

20 A. No, sir.

21 BY THE COURT:

22 Q. Yes, ma'am.

23 A. (By Juror Ms. Tinnona Levet Patterson) I didn't hear  
24 it on TV or on the news. I called the number when I found,  
25 when I read the letter, and asked the lady where was it going  
26 to be at because when I saw the place where it was on the  
27 paper, I thought it was going to be there, and she said that it  
28 was going to be here. And I asked her what kind of case it  
29 was, and she said a capital murder. And I just figured they

1 wouldn't want me because I don't believe in the death penalty.  
2 And that's all I thought about it. There was nothing else I  
3 thought about that.

4 Q. Okay, I'm going to specifically ask that question,  
5 and I have to ask a couple of questions in relation to it. So  
6 I will come back to you. That is Ms. Patterson. We will go  
7 into that in depth. But right now, did you know anything about  
8 this case? Have you heard anything about anything?

9 A. Uh-uh.

10 Q. Okay, thank you, ma'am.

11 BY THE COURT:

12 Q. And that is number 28, Ms. Cayson?

13 A. (By Juror Ms. Mamie L. Cayson) 28.

14 Q. All right.

15 A. Yeah, I heard it Friday, and I heard it when it  
16 happened on TV.

17 Q. Did you form an opinion based on that?

18 A. No, I just heard it.

19 Q. Okay, you think you could base your decision on the  
20 evidence as you see it from the witness stand?

21 A. Yeah.

22 Q. Okay, thank you. Do you know of any reason, Ms.  
23 Cayson, you couldn't be a fair and impartial juror?

24 A. No.

25 BY THE COURT:

26 Q. Okay, let's see; next row. Yes, sir; that is number  
27 33.

28 A. (By Juror Mr. Pat Riggs) I saw it on TV when it  
29 happened. I didn't know they had ever arrested anybody for

1 doing it though. I saw it when it first happened, and they  
2 didn't know who did it.

3 Q. So in other words, you didn't know whether anybody  
4 had been charged until you got here today or right around this  
5 day?

6 A. Yes.

7 Q. So did you form an opinion--

8 A. No, I couldn't.

9 Q. --about this case?

10 A. No, I couldn't.

11 Q. Thank you, sir.

12 BY THE COURT:

13 Q. Yes. That is number 38. That is Mr. Fairley?

14 A. (By Juror Mr. Robert Fairley) Yes, sir. I saw it in  
15 the newspaper and TV.

16 Q. Did you form an opinion based on what you heard?

17 A. No, sir.

18 Q. Is there anything about that that would keep you from  
19 being a fair and impartial juror in this case?

20 A. No, sir.

21 Q. All right, thank you.

22 BY THE COURT:

23 Q. Yes, ma'am; 34, Ms. Carr?

24 A. (By Juror Ms. Bobbie R. Carr) I heard it on TV when  
25 it happened.

26 Q. Did you form an opinion?

27 A. No.

28 Q. Do you think you could be a fair and impartial juror  
29 and set all that aside?

1 A. Yes.

2 Q. Thank you, ma'am. All right.

3 BY THE COURT:

4 Q. Let's go to the next row. Yes, sir; that is number  
5 41, Mr. Gentry.

6 A. (By Juror Mr. Larry T. Gentry) I saw it on television  
7 and read extensively about it in the newspapers.

8 Q. Did you form an opinion based on that?

9 A. No, sir.

10 Q. Do you think that you could be a fair and impartial  
11 juror and set that aside?

12 A. Absolutely.

13 Q. Thank you, sir.

14 BY THE COURT:

15 Q. All right. Yes, sir; that is number-- well, first,  
16 43?

17 A. (By Juror Mr. Gregory Hayse) Yes.

18 Q. 43 is Ms. Johnson?

19 A. (By Juror Ms. Kathryn W. Johnson) I saw it on TV, the  
20 news.

21 Q. Did you form an opinion?

22 A. No.

23 Q. Do you think that whatever, you could put aside  
24 whatever you heard or read and base your decision on the facts  
25 as you see them from the witness stand?

26 A. Yes.

27 Q. Thank you, ma'am.

28 BY THE COURT:

29 Q. 44, Mr. Hayse. Is that right, Hayse?

1 A. (By Mr. Gregory Allen Hayse) Yes, sir.

2 Q. All right.

3 A. I believe when it happened back few, a few months ago  
4 or whatever, my wife told me about it when I got home from  
5 work, and I commented on how, you know, sad it was that it  
6 happened, and that is about it until I got up this morning and  
7 read that they were having the jury selection today, and I just  
8 assumed that this was it, but that's the only--

9 Q. Did you ever, have you ever formed an opinion about  
10 this case one way or another?

11 A. No, sir. I had forgotten all about it, you know, to  
12 be honest with you until I picked up the paper this morning,  
13 and said-- I showed my wife. And she said, "Well, I bet that  
14 is you." (Laughter) I mean not the one that done it. (More  
15 laughter) Let me get that straight. I swear.

16 Q. That is fair. Do you think you could set aside what  
17 you have seen or read or know about this case and be a fair and  
18 impartial juror in this matter?

19 A. Sure; sure.

20 Q. Thank you, sir.

21 BY THE COURT:

22 Q. All right, next row. Yes, ma'am; that is number 52.

23 A. (By Juror Ms. Leigh Dozier) I saw it on the news  
24 Friday.

25 Q. On the news Friday?

26 A. Friday night.

27 Q. Okay, that is Ms. Dozier. Anything about that, Ms.  
28 Dozier, that would keep you from being a fair and impartial  
29 juror?

1 A. No.

2 Q. Did you form an opinion based on anything that you  
3 have heard?

4 A. No, sir.

5 Q. Thank you, ma'am.

6 BY THE COURT:

7 Q. Yes.

8 A. (By Juror Ms. Gena Whitten Richardson) I didn't see  
9 it on TV or in the news, but like I said, my fiance' is a  
10 police officer, and I have talked with him a lot about it.

11 Q. Okay; right. That is Ms. Richardson, number 55.  
12 Thank you, ma'am.

13 BY THE COURT:

14 Q. Yes. And that is number 51?

15 A. (By Juror Ms. Sherriel Ozburn) 51.

16 Q. All right, Ms. Ozburn.

17 A. I heard about it on the news the day I got my summons  
18 about a month ago, and that is the first I knew anything about  
19 it.

20 Q. Okay, is there anything-- have you formed an opinion  
21 about this matter?

22 A. No, sir.

23 Q. Do you think that you could base your decision on, in  
24 this case on the evidence as you see it from the witness stand?

25 A. Yes.

26 Q. You could set all that aside?

27 A. Yes.

28 Q. Thank you, ma'am.

29 BY THE COURT:



1 Q. Yes, ma'am.

2 A. (By Juror Ms. Reba A. Floyd) I hadn't saw it on the  
3 news or newspaper, but I have relatives that talked to me, my  
4 relatives about it.

5 Q. That is Ms. Floyd?

6 A. Uh-huh.

7 Q. Do you have relatives in Montgomery County?

8 A. No, this was my relatives up here.

9 Q. So the people that talked to you really knew  
10 nothing. Did they know anything about this case?

11 A. No--

12 Q. --other than what they heard?

13 A. Just what they heard on TV.

14 Q. Did you form any opinion based on what you have seen  
15 or read or what you discussed with your relatives in this  
16 matter?

17 A. No, sir.

18 Q. No opinion whatsoever?

19 A. (Juror number 56 shakes her head.)

20 Q. Do you think you could be a fair and impartial juror  
21 and try this case on the evidence as it comes from the witness  
22 stand?

23 A. Yes.

24 Q. Thank you, ma'am.

25 BY THE COURT:

26 Q. Next row. All right.

27 A. (By Juror Mr. Charles Edward Rousseau) 58. I saw it  
28 on TV and read it in the newspaper when it happened.

29 Q. Fifty?

1 A. 58.

2 Q. Mr. Rousseau?

3 A. Yes.

4 Q. Did you form an opinion, Mr. Rousseau?

5 A. No, sir.

6 Q. Do you think you could be a fair and impartial juror  
7 in this case?

8 A. Yes, sir.

9 Q. All right. Thank you, sir.

10 A. (By Juror Mr. Jimmy Lee Jones) 61.

11 Q. Mr. Jones?

12 A. Right. I saw it on the news. I read it in the  
13 newspaper, and my son told me about it.

14 Q. Okay. Now your son is a highway patrolman; is that  
15 correct?

16 A. Right.

17 Q. Thank you, Mr. Jones.

18 BY THE COURT:

19 Q. Okay, there was another hand. Yes, ma'am.

20 A. (By Juror Ms. Brenda Keliea Alexander) Just on  
21 television and newspaper.

22 Q. And that is Ms. Alexander?

23 A. Uh-hum.

24 Q. Did you form an opinion, Ms. Alexander?

25 A. No, sir.

26 Q. Do you think you could be a fair and impartial juror  
27 and put aside what you have heard in this matter?

28 A. Yes, sir.

29 Q. Thank you.

1 BY THE COURT:

2 Q. Yes, ma'am?

3 A. 63.

4 Q. Okay, that is Ms. Smallwood.

5 A. I have got a friend that is from Winona. Her family  
6 still lives there, and I have heard, not facts but just--

7 Q. Street talk?

8 A. Street talk.

9 Q. Gossip?

10 A. (Juror Ms. Smallwood nods her head.)

11 Q. Did you form an opinion based on what you heard?

12 A. No, sir.

13 Q. Do you think that you could be a fair and impartial  
14 juror, put aside everything that you have heard about this  
15 case, whether it's from the news media or street talk or  
16 whatever and be a fair and impartial juror in this matter?

17 A. Yes, sir.

18 Q. You did not hear that from somebody that purported to  
19 be a witness or know the actual facts, did you?

20 A. No, sir.

21 Q. Okay, thank you, Ms. Smallwood.

22 BY THE COURT:

23 Q. Yes, sir.

24 A. (By Juror Mr. Mark S. Shack) 64. I read in the  
25 newspaper and TV, I guess, TV too.

26 Q. That is Mr. Shack. Mr Shack, did you form an opinion  
27 based on what you heard or read?

28 A. No, sir.

29 Q. Is there anything about, anything about that, about

1 what you heard or read to keep you from being a fair and  
2 impartial juror in this case?

3 A. No, sir.

4 Q. All right. Thank you, sir.

5 BY THE COURT:

6 Q. All right, next row. Okay, let's just start down  
7 here.

8 A. (By Juror Mr. Larry Jeffrey Jones) The only thing I  
9 have heard about the case was when I got my juror summons, I  
10 had co-workers and relatives telling me what they had seen on  
11 TV about the situation.

12 Q. And that is 66, Mr. Jones?

13 A. 66.

14 Q. Okay, did you form an opinion based on those  
15 conversations?

16 A. No, sir.

17 Q. Do you think you could be a fair and impartial juror?

18 A. Yes, sir.

19 Q. Okay, thank you, sir.

20 BY THE COURT:

21 Q. All right, next one on that row. Who is next? All  
22 right, sir.

23 A. (By Juror Mr. Ralph Woody Gray) 71.

24 Q. 71?

25 A. Yes, sir.

26 Q. Mr. Gray.

27 A. Yes, sir. I saw it on the TV and read it in the  
28 newspaper.

29 Q. Did you form an opinion based on that?

1 A. Yes, sir. I did.

2 Q. You did?

3 A. Yes, sir.

4 Q. Would it take sworn testimony, Mr. Gray, for you to  
5 overcome--

6 A. Yes, sir; it would.

7 Q. Huh?

8 A. Yes, sir; it would.

9 Q. Okay, thank you, Mr. Gray.

10 BY THE COURT:

11 Q. Okay.

12 A. (By Juror Mr. Jimmy Dillard) I seen it on the news  
13 also at the time it happened.

14 Q. That is Mr. Dillard?

15 A. Yes, sir.

16 Q. Okay, did you form an opinion, Mr. Dillard?

17 A. No, sir.

18 Q. Do you think that you could be a fair and impartial  
19 juror and set aside what you have heard about this case and try  
20 it on the facts from the witness stand?

21 A. Yes.

22 Q. Thank you, Mr. Dillard.

23 BY THE COURT:

24 Q. Okay, next row. All right, would you stand up,  
25 please. 79, Ms. Young?

26 A. (By Juror Ms. Ruth Young) I heard it on the TV and  
27 newspaper.

28 Q. Okay, did you form an opinion?

29 A. No, sir.

1 Q. Do you think you could set aside whatever it was you  
2 heard or read and be a fair and impartial juror in this case?

3 A. Yes, sir.

4 Q. Thank you, ma'am.

5 BY THE COURT:

6 Q. Yes, ma'am.

7 A. (By Juror Ms. Ramona Arlene Martin) I have a first  
8 cousin who is from Winona, and also, I have seen it on the  
9 news.

10 Q. Ms. Martin? Number 75. Did you form an opinion?

11 A. Yes, sir.

12 Q. Okay, was that based on what you talked about with  
13 these people from Winona?

14 A. Yes, and also on the news.

15 Q. Okay, Ms. Martin, would it take sworn testimony to  
16 overcome that opinion?

17 A. Yes.

18 Q. Thank you, ma'am.

19 BY THE COURT:

20 Q. All right. Yes.

21 A. (By Juror Ms. Doris Lumsden) TV and newspaper.

22 Q. What is your number, ma'am?

23 A. 77.

24 Q. Okay, that is Ms. Lumsden?

25 A. Yes.

26 Q. Did you form an opinion based on what you have heard?

27 A. No, sir.

28 Q. Do you think you could be a fair and impartial juror?

29 A. Yes.

1 Q. Thank you, ma'am.

2 BY THE COURT:

3 Q. All right, yes.

4 A. (By Juror Ms. Donna Brooks) Number 78.

5 Q. Ms. Brooks.

6 A. Yes. I received my summons on Friday, and I had  
7 mentioned it to a friend that I had received that, and on  
8 Saturday she called me and told me that it had been on TV  
9 Friday night, and she felt like that is what I was being  
10 summonsed for.

11 Q. As a result of any of that, did you form any opinion  
12 based on this case, I mean about this case?

13 A. No, sir.

14 Q. Do you think you could be a fair and impartial juror  
15 and set aside your conversation with her or whatever else you  
16 might have heard and try this case on the facts as you see them  
17 from the witness stand?

18 A. Yes, sir; I do.

19 Q. Thank you, ma'am.

20 BY THE COURT:

21 Q. All right, yes, sir-- yes, ma'am.

22 A. (By Juror Ms. Jean Russell) (Inaudible).

23 Q. Give me your number again, ma'am.

24 A. 80.

25 Q. All right, that is Ms. Russell.

26 A. I heard from all of the above and have an opinion and  
27 don't want to be, don't want the responsibility of making the  
28 decision for somebody else.

29 Q. Okay, you have formed an opinion?

1 A. Yes.

2 Q. And you don't feel like that you could-- you feel  
3 like it would take sworn testimony--

4 A. Yes, but I don't want the responsibility of making a  
5 decision for somebody else.

6 Q. In other words, you feel like you couldn't pass  
7 judgment one way or another?

8 A. Right.

9 Q. Thank you, ma'am.

10 BY THE COURT:

11 Q. All right, next row. Okay, right here; that will be  
12 fine. Yes, ma'am?

13 A. (By Juror Ms. Edith Carolyn Davis) 85.

14 A. Ms. Davis?

15 A. Yes. I heard it on TV.

16 Q. Did you form an opinion?

17 A. No, sir. I didn't.

18 Q. Do you feel like you could be a fair and impartial  
19 juror, set what you have heard aside, and base your decision on  
20 the evidence from the witness stand?

21 A. Yes, sir; I could.

22 Q. Thank you, ma'am.

23 BY THE COURT:

24 Q. Yes, sir-- yes, ma'am. That is the lady with the  
25 Sheriff's Department. I am sorry; what is your number?

26 A. (By Juror Ms. Jennie Lou Buchanan) 89.

27 Q. 89. Okay, Ms. Buchanan, you have already said you  
28 didn't think you could be fair and impartial in this case; is  
29 that right?



1 A. Correct.

2 Q. Okay, thank you.

3 BY THE COURT:

4 Q. Is that the last-- that is not the last row. Who is  
5 next?

6 A. (By Juror Mr. James Edwin Page) 96, Page.

7 Q. Yes, sir, Mr. Page.

8 A. TV and newspaper.

9 Q. Did you form an opinion based on what you heard?

10 A. No, sir.

11 Q. Do you think you could be a fair and impartial juror  
12 in this case?

13 A. Yes, sir.

14 Q. Thank you, sir.

15 BY THE COURT:

16 Q. Yes, sir.

17 A. (By Juror Mr. Wesley David McIntire) Number 90. I  
18 heard about it on the TV.

19 Q. Mr. McIntyre?

20 A. Yes, sir.

21 Q. Did you form an opinion based on what you heard?

22 A. No, sir.

23 Q. Do you think you could be a fair and impartial juror  
24 and set all that aside?

25 A. Yes, sir.

26 Q. Thank you.

27 BY THE COURT:

28 Q. Yes, ma'am?

29 A. (By Juror Ms. Christy Michelle Lindsey) Number 93. I

1 heard it on the news when it happened. Other than that, I  
2 didn't know anyone had been arrested for it.

3 Q. Okay, what is that number?

4 A. 93.

5 Q. That is Ms. Lindsey?

6 A. Yes, sir.

7 Q. Ms. Lindsey, did you form an opinion based on what  
8 you heard?

9 A. No, sir.

10 Q. Do you think you could be a fair and impartial juror  
11 in this matter?

12 A. Yes, sir.

13 Q. Thank you, ma'am.

14 BY THE COURT:

15 Q. Okay, anybody else? (No further responses).

16 Okay, the State in this case is required to prove its  
17 case or the Defendant is presumed innocent like I told you  
18 while ago. He is presumed innocent until such time as the  
19 State proves his guilt beyond a reasonable doubt. That is the  
20 burden in this country as far as criminal cases go. The State  
21 must prove his guilt beyond a reasonable doubt. Now is there  
22 anybody feels that that burden ought to be something else, that  
23 it ought to be higher than a reasonable doubt or lower than a  
24 reasonable doubt? Okay.

25 Now I believe, I believe you all said while ago that  
26 none of you were related to Mr. Flowers. Do any of you know  
27 him or have any family member that knows him, have any  
28 relationship with him one way or another? Okay.

29 Have any of you ever been or had any family member

1 that was a victim of this type of crime? Let's say a crime of  
2 violence or for that matter, any felony. Have any of you been  
3 a victim of a felony or had any family member that was a victim  
4 of a felony? Okay, let's start on the first row. Ms. Jones?

5 A. (By Juror Ms. Billie M. Jones) Well, it was thirty  
6 years ago. I had a great aunt and uncle that were murdered in  
7 a store, robbed and murdered, and the store was burned down  
8 around them.

9 Q. Okay, where was that?

10 A. In West Point.

11 Q. In West Point. Okay, it was a long time ago, but I  
12 do need for you to answer the question like that because it's  
13 important as to how you may or may not feel. Is there  
14 anything about that fact, would anything about that fact affect  
15 you in this matter and keep you from being a fair and impartial  
16 juror?

17 A. No.

18 Q. It wouldn't have anything to do with it--

19 A. No.

20 Q. Is that right? Okay, thank you.

21 BY THE COURT:

22 Q. Yes, ma'am, number 7.

23 A. (By Juror Ms. Linda Enfinger) I have a nephew that  
24 was shot and killed in Alabama.

25 Q. How long ago was that?

26 A. I think that was about 17 years ago.

27 Q. Is there anything about that fact or that occurrence  
28 that would affect you in this matter?

29 A. No, sir.

1 Q. Thank you, ma'am.

2 BY THE COURT:

3 Q. Second row? Third row? I want to go back to the  
4 fourth row?

5 A. (By Juror Ms. Tinnona Levet Patterson) Any kind of  
6 felony?

7 Q. Yeah, any kind of felony.

8 A. I have got a brother that's in a federal correctional  
9 institute, but it has nothing to do with this type of case.

10 Q. Okay, would that affect you in this matter?

11 A. No, sir.

12 Q. Okay, thank you, ma'am.

13 BY THE COURT: That is number 27, gentlemen, Ms.  
14 Patterson.

15 Q. Yes?

16 A. (By Juror Ms. Tracey Edwina Smith) My [REDACTED]  
17 [REDACTED] was raped.

18 Q. How long ago was that?

19 A. (Response inaudible).

20 Q. Would that affect you in this matter in any way?

21 A. No, sir.

22 BY MR. BILLY GILMORE: Judge, what number was  
23 that?

24 BY THE COURT: I'm sorry.

25 A. (By Juror 29, Ms. Smith) 29.

26 Q. 29, Ms. Smith.

27 BY THE COURT:

28 Q. All right. Yes? And when I get back that far, I  
29 need for you to stand up so she can hear you. I apologize for

1 making you stand up and down.

2 A. (By Juror Ms. Bobbie R. Carr) My mother was murdered  
3 by my stepfather.

4 Q. That is number 34, Ms. Carr.

5 A. Uh-huh.

6 Q. How long ago was that?

7 A. 24 years ago.

8 Q. Okay, would that matter, would it affect you in this  
9 matter?

10 A. I think it would.

11 Q. You think it would, Ms. Carr? Thank you, ma'am.

12 BY THE COURT:

13 Q. Okay, yes, ma'am.

14 A. (By Juror Ms. Judy C. Crump) My grandfather was  
15 murdered, but it has been about 33 years ago, and I don't think  
16 it would affect me.

17 Q. That is Ms. Crump, number 36. Thank you.

18 BY THE COURT:

19 Q. All right.

20 A. (By Juror Ms. Margery Pauline Pannell) My daddy was  
21 killed or murdered in '79.

22 Q. Okay, Ms. Pannell, would that affect you?

23 A. Uh, I don't-- I will say no.

24 Q. Okay, you think you could try this case on whatever  
25 you saw to be the facts in this case; is that correct?

26 A. Yes.

27 Q. Thank you.

28 BY THE COURT:

29 Q. All right.

1           A.    (By Juror Mr. Larry T. Gentry) I had a cousin that  
2 was murdered about 8 years ago.

3           Q.    That is number 47.

4           A.    41.

5           Q.    41, I'm sorry. You can see how bad my eyes are.  
6 That is Mr. Gentry?

7           A.    Yes.

8           Q.    Would that affect you in this matter?

9           A.    No, sir.

10          Q.    Thank you, sir.

11 BY THE COURT:

12          Q.    All right, next row? And the next row? Yes, sir.  
13 Mr. Valentine?

14          A.    (By Juror Mr. Kenneth H. Valentine) Yes. My wife's  
15 mother was a homicide victim 17 years ago.

16          Q.    Would that affect you in this matter in any way?

17          A.    No, sir.

18          Q.    Thank you, sir.

19 BY THE COURT:

20          Q.    Next row? Next--okay, yes, sir.

21          A.    (By Juror Mr. Jimmy Dillard) My wife's first cousin  
22 was a murder victim.

23          Q.    That is Mr. Dillard; is that right?

24          A.    Yes, sir. About ten years ago.

25          Q.    Would that affect you, Mr. Dillard, in any way?

26          A.    No, sir.

27          Q.    Thank you, sir.

28 BY THE COURT:

29          Q.    All right. Yes?

1           A.    (By Juror Mr. David Wayne Lindley) My first cousin  
2 was murdered about a year ago.

3           Q.    Mr. Lindley?

4           A.    Yes.

5           Q.    Is that right?

6           A.    Yes.

7           Q.    Would that affect you, Mr. Lindley, in this matter?

8           A.    No.

9           Q.    Okay, thank you.

10 BY THE COURT:

11          Q.    Yes; back here. Number 91?

12          A.    (By Juror Mr. Billy Yant, Jr.) My father was Chief of  
13 Police of Verona. He was killed about 9 years ago.

14          Q.    Mr. Yant? That is number 91. Mr. Yant, would that  
15 affect you in this case at all?

16          A.    Draw your own conclusions because I have no idea.

17          Q.    Sir?

18          A.    Draw your own conclusions because I have no idea.

19          Q.    Well, they are not going to let me sit on the jury.

20 And like I, it's like I said on the front end; there are no  
21 wrong answers, and you are the only one that can answer that.

22 And I need to know whether you can set that aside and try this  
23 case against this Defendant on the evidence as it comes from  
24 the witness stand, and in doing that, presume that he is  
25 innocent until such time as the State proves his guilt beyond a  
26 reasonable doubt. Can you do that?

27          A.    Honestly, I would probably have a hard time.

28          Q.    All right, Mr. Yant. Thank you.

29 BY THE COURT:

1 Q. Okay, did I miss anybody? Yes.

2 A. (By Juror Ms. Joyce N. McArthur) I had a relative  
3 that was raped.

4 Q. Ma'am?

5 A. I had a relative that was raped.

6 Q. That was raped?

7 A. Yes.

8 Q. What number is that?

9 A. 92.

10 Q. All right. Ms. McArthur?

11 A. Yes.

12 Q. Ms. McArthur, would that affect you in this case?

13 A. No, sir.

14 Q. Okay.

15 BY THE COURT:

16 Q. Anybody else? Now the next question I have is a  
17 little personal, and I don't want to know any of the facts. I  
18 just need to know really kind of-- well, it won't be exactly a  
19 yes or no answer. We may have to go into it a little bit. I'm  
20 not going to go into the facts. But have any of y'all ever  
21 been charged with a felony? I understand you haven't ever been  
22 convicted because you wouldn't be here now. Any of you ever  
23 been charged with a felony? Okay, Ms. Pannell.

24 A. (By Juror Ms. Margery Pauline Pannell) Assault on a  
25 police officer.

26 Q. Was it simple? Well, that would be-- either way it  
27 would be a felony. How long ago was that, Ms. Pannell?

28 A. About two years.

29 Q. Is that matter over?



1           A.    I hope so.  (Laughter).

2           Q.    I hope it is too, Ms. Pannell.  Is there anything  
3 about that incident that would affect you in this case in any  
4 way and keep you from being a fair and impartial juror?

5           A.    (Juror Ms. Pannell shakes her head in the negative.)

6           Q.    Thank you, Ms. Pannell.  Anybody else?  (No further  
7 response).

8                       At the end of the case I'm going to instruct you on  
9 what the law is in this case.  As I have told you now about  
10 three or four times, you will decide the facts, and then once  
11 you decide the facts, you must apply the law that I give you to  
12 the facts, and you must apply that law to the facts and apply  
13 it in this case as I tell it to you.  In other words, you have  
14 got to apply it whether you believe it is the law or whether  
15 you believe it ought to be the law.  I get to say what the law  
16 is in this particular case, and under your oath you can't  
17 disagree with me on that.  You have to accept that as being the  
18 law and apply it to the facts.  Does anybody feel like there  
19 could be a situation or would there be a situation where you  
20 would not or could not apply the law as I give it to you to  
21 this case?  Anybody at all?

22                      This case is, could be what is called a bifurcated  
23 trial.  In the event, once there are two-- there is a  
24 possibility of two trials within one.  The first trial is to  
25 determine the guilt or innocence of the Defendant.  If the jury  
26 finds that the Defendant is guilty, then there will be a second  
27 trial, and at that second trial the jury would have to  
28 determine the sentence of the Defendant.  One of those  
29 sentences, and I will, of course, give you instructions

1 concerning that element of the law if we ever get to that  
2 point. But one of the options, one of the sentencing options  
3 is the death penalty. And the only, in our state only a jury  
4 can return that verdict.

5 So I have to ask you some questions concerning your  
6 feelings on the death penalty. I am going to first ask you,  
7 and we will have to go row by row. Do any of you have any  
8 religious or conscientious scruples that would prevent you from  
9 giving the death penalty? And on the other side of that coin  
10 is, do any of you feel like that you would automatically give  
11 the death penalty regardless of what the facts are and what the  
12 law is?

13 Now let's just go row by row and let's see if I have  
14 got anybody. I know I have got one lady that has got feelings  
15 about that. I will inquire about that. On the first row,  
16 anybody feel that way. Okay, Ms. Holley?

17 A. (By Juror Ms. Colleen Marie Holley) I am more  
18 undecided, but I would lean more towards being against the  
19 death penalty.

20 Q. You lean more against it, okay. The question is  
21 could you return the death penalty if the law authorizes it and  
22 the facts justify it? In other words, after you-- if I tell  
23 you, if I give you the law and say that you are authorized to  
24 give the death penalty in this case, and you see, and after you  
25 have heard the facts, you decide it is justified, could you, in  
26 fact, then vote for the death penalty?

27 A. I can't say. I don't know. Um, yes.

28 Q. You could?

29 A. Yes.

1 Q. Okay, thank you, ma'am. And in like manner, I assume  
2 that you would not automatically, if it was a conviction, you  
3 wouldn't then automatically vote for the death penalty if the  
4 law and-- if I didn't give you the law on it and the facts  
5 didn't justify it, you couldn't automatically do that; is that  
6 right?

7 A. No, I would have to be convinced.

8 Q. All right, thank you.

9 BY THE COURT:

10 Q. Yes, ma'am. Number 6, Ms. Poole.

11 A. (By Juror Ms. Lottie Poole) I am against it.

12 Q. You are against it. You are against it under any  
13 circumstances?

14 A. Well.

15 Q. It's okay. Like I say, there are no wrong answers,  
16 and if you can't, that is fine. If you can, that is fine.

17 A. I just wouldn't want to be a part of that.

18 Q. Okay, even if I told you that the law would allow it  
19 in this case and the facts and if you found that the facts  
20 would justify it, you don't think that you could do that? Is  
21 that correct?

22 A. Yeah. Well, I guess I could.

23 Q. You could do it if that were the case?

24 A. I could if that were the case.

25 Q. If after you heard all of it, you decided that it was  
26 appropriate, you think you could do that?

27 A. I think I could do it.

28 Q. Thank you, ma'am.

29 BY THE COURT:

1 Q. Second row. Yes, ma'am; Ms. Foote?

2 A. (By Juror Ms. Rachel F. Foote) (Raised her hand).

3 Q. You are against it, Ms. Foote?

4 A. No, but I could not evoke it myself. I could not do  
5 that.

6 Q. You could not vote for it; is that correct?

7 A. That's right.

8 Q. Okay.

9 A. But I'm not against it.

10 Q. Regardless of what the law says or what the facts  
11 justify, you--

12 A. --I would have to live with my own conscience, and I  
13 just--

14 Q. That is fine. I mean I promise you; I am passing no  
15 judgment on anybody about how you feel about this.

16 A. Right.

17 Q. I have to-- but--

18 A. --And I feel that I have already made up my mind.

19 Q. Yes, ma'am. I understand that, but that is what I  
20 want y'all to understand, that I promise you there are no wrong  
21 answers to this, but I have to know how you feel about it.  
22 It's essential that I do.

23 Anybody else on the second row? Now on the third  
24 row? All right, and that is number 20, Ms. Hodges, and number  
25 21, Ms. Durham. Is that correct?

26 A. (By Jurors Ms. Kathy Lois Hodges and Ms. Rosie L.  
27 Durham) Yes.

28 Q. All right, let me just ask y'all both together, and  
29 there again, I'm having to ask the questions over and over, but

1 it's just essential that I do so. Are each of you telling me  
2 that you could not vote for the death penalty even if I told  
3 you that the law authorized it and the facts, and you found  
4 that the facts justified it? You could not do it?

5 A. (By Juror Ms. Kathy Hodges) I couldn't.

6 A. (By Juror Ms. Rosie Durham) I couldn't.

7 Q. Neither one of you could? Okay, thank you, ma'am.

8 BY THE COURT:

9 Q. All right, the next row. All right, that is number  
10 26. Ms. Tiggs, of course, you just heard the way I explained  
11 this question. Under those circumstances, could you ever vote  
12 for the death penalty?

13 A. No.

14 Q. Under no circumstances at all; is that correct?

15 A. (Response inaudible).

16 BY THE COURT REPORTER: Could she stand up? I  
17 couldn't hear her.

18 BY THE COURT: Yeah, number 26. She said no.

19 Q. Okay, Ms. Patterson?

20 A. (By Juror Ms. Tinnona Levet Patterson) Yes, sir.

21 Q. How about you?

22 A. I couldn't do it.

23 Q. Under any circumstances, even if I told you it was  
24 authorized by the law and you found that the facts justified  
25 it, you don't think you could do it?

26 A. I think a person being put to death is God's  
27 business, and I just, I couldn't do it.

28 Q. That's fine, Ms. Patterson; thank you.

29 BY THE COURT:

1 Q. Okay, anybody else on that row? Yes, ma'am.

2 A. (By Juror Ms. Marlene Denton) 30. I don't believe I  
3 could.

4 Q. Okay, now there again you understand how I ask the  
5 question. In relation to what I tell you the law is and in  
6 relation to the facts as you see them, under any circumstances  
7 you could not do it; is that correct?

8 A. No.

9 BY THE COURT REPORTER: Who was that?

10 BY THE COURT:

11 Q. Stand up, please, ma'am. What is your name?

12 A. Marlene Denton.

13 Q. Okay, that is number 30. Thank you, ma'am.

14 BY THE COURT:

15 Q. Is that all on that row? It is, isn't it? Okay,  
16 let's go to the next row. Yes, sir.

17 A. (By Juror Mr. Pat Riggs) I have really got a lot of  
18 indecision about the death penalty. Some of the ones I have  
19 seen, Jeffrey Dahmer and the Oklahoma thing, I haven't got a  
20 problem with. I am not sure. I don't know what the  
21 instructions are, so I don't know how that would be.

22 Q. Well, the instructions would be that I will give you  
23 an instruction. If you have to consider it at all, it will be  
24 an instruction from me saying that you can consider it, so  
25 that's the only instruction it will be. Of course, I don't  
26 know what the facts are going to be any more than you do, and  
27 you would have to base it on the facts. Then if it comes to  
28 the point where I say you can do it, then you have to justify  
29 it based on those facts. Nobody can know that ahead of time.

1 In other words, nobody could know the difference between  
2 Jeffrey Dahmer and Ted Bundy until after we try the case. The  
3 question I'm asking you is can you be a fair and impartial  
4 juror, and if the law, if I authorize you to consider that  
5 verdict and the facts justify it, then can you under your duty  
6 as a juror return -- your oath is going to say you will follow,  
7 you will base it on the facts, your decision on the facts and  
8 the law as I give it to you. And that's all I am asking you is  
9 that if you see that, then could you give the death penalty?

10 A. I could. Yes.

11 Q. Okay, thank you, sir. That is number--

12 A. 33.

13 Q. 33, Mr. Riggs.

14 BY THE COURT:

15 Q. Okay, anybody else? Yes, sir. I'm sorry; I thought  
16 somebody in the middle raised their hand. Okay, yes, sir.

17 A. (By Juror Mr. Thomas Kevin Barnett) I don't think I  
18 could.

19 Q. That is 39, Mr. Fields?

20 A. Barnett.

21 Q. No, Mr. Barnett.

22 A. Yes.

23 Q. Under any circumstances?

24 A. I don't think so.

25 Q. Okay. Thank you, sir.

26 A. (By Juror Ms. Margery Pauline Pannell) I don't think  
27 I could either.

28 Q. Ms. Pannell?

29 A. Yes.

1 Q. Okay, you also have heard the context that I have put  
2 this in. Based on what I have said, you don't think under any  
3 circumstances you could do it?

4 A. No.

5 Q. Okay.

6 BY THE COURT:

7 Q. Next row? Next row? Okay, yes.

8 A. (By Juror Ms. Reba A. Floyd) 56. I couldn't do it.

9 Q. Under any circumstances?

10 A. No, sir.

11 Q. Okay. That is Ms. Floyd, all right.

12 BY THE COURT:

13 Q. Yes, ma'am.

14 A. (By Juror Ms. Leigh Dozier) I don't think I could.

15 Q. Okay, that is Ms. Dozier. Ms. Dozier, of course, you  
16 and Ms. Floyd, y'all have heard, you know, the context that I  
17 am putting it in now. Even based on what I have said and  
18 talking about the law authorizing it and the facts justifying  
19 it, you don't think you could do it regardless of what that  
20 was; is that right?

21 A. (By Ms. Dozier) Um, no. I just couldn't.

22 Q. Okay, Ms. Dozier, thank you, ma'am.

23 BY THE COURT:

24 Q. Yes.

25 A. (By Juror Ms. Sherriel Ozburn) I could not.

26 Q. Okay. Ms. Ozburn?

27 A. Yes.

28 Q. Okay, thank you, Ms. Ozburn.

29 BY THE COURT:



1 Q. Okay, who is next, or is there any next? Anybody  
2 else back beside behind there? Yes, ma'am. What is that  
3 number?

4 A. (By Juror Ms. Annette Fells) 74.

5 Q. 74. That is Ms. Fells?

6 A. Right.

7 Q. Ms. Fells, you don't think under any circumstances  
8 you could vote for the death penalty?

9 A. No, sir.

10 Q. Okay. Regardless of what the facts were or what I  
11 told you the law was?

12 A. No, sir.

13 Q. Thank you, ma'am.

14 BY THE COURT:

15 Q. Okay. Yes.

16 A. (By Juror Ms. Gladys Pearl Baker) No, sir. I  
17 couldn't either. I couldn't pass a death sentence on nobody.

18 Q. That is 86?

19 A. 86.

20 Q. Okay, and that is Ms. Baker?

21 A. Yes, it is.

22 Q. You couldn't do it under any circumstance?

23 A. No, sir. I sure couldn't.

24 Q. Thank you, ma'am.

25 BY THE COURT:

26 Q. And who is that next?

27 A. (By Juror Ms. Ruth Young) Number 79.

28 Q. Ms. Young?

29 A. I could not pass the death penalty.

1 Q. Under any circumstances?

2 A. No, sir.

3 Q. Okay, thank you, ma'am.

4 BY THE COURT:

5 Q. Yes, sir, up here.

6 A. (By Juror Mr. Mark S. Shack) No, sir.

7 Q. What is that number?

8 A. 64.

9 Q. 64. Mr. Shack?

10 A. Yes, sir.

11 Q. Under any circumstances, Mr. Shack?

12 A. No, sir.

13 Q. Thank you.

14 BY THE COURT:

15 Q. Yes, ma'am. Well, I'm sorry, Mr. Dillard; I will get  
16 you first. What about it, Mr. Dillard?

17 A. (By Juror Mr. Jimmy Dillard) Well, I always thought I  
18 could, but when it comes right down to it, I just don't really  
19 feel I could.

20 Q. Okay, now Mr. Dillard, here is the deal. I mean as  
21 you know, you have already heard. I want to make sure you  
22 understand what I'm talking about. You will never have to  
23 unless I tell you you can. That is the first thing.

24 A. I understand that.

25 Q. And then you are saying even if the facts justified  
26 it, you found that the facts justified it, you could not vote  
27 for it?

28 A. No, sir. I don't think I could.

29 Q. Okay, Mr. Dillard, thank you.

1 BY THE COURT:

2 Q. Yes, ma'am. That is number 70, Ms. Coker?

3 A. (By Juror Ms. Cornelia Coker) Yes, sir. I couldn't.

4 Q. You could not?

5 A. No.

6 Q. Under any circumstances?

7 A. No, sir.

8 Q. Thank you, Ms. Coker.

9 BY THE COURT:

10 Q. Yes. Let's go back here.

11 A. (By Juror Ms. Jean Russell) I couldn't.

12 Q. Yes, ma'am. That is number 80. I'm sorry; it's not  
13 either.

14 A. I want no responsibility for it though.

15 Q. 89? I am lost.

16 BY MR. EVANS: It's 80.

17 BY THE COURT:

18 Q. 80? Ms. Russell, okay. Thank you, Ms. Russell.

19 Yes.

20 A. (By Juror Ms. Diane J. McNeil) 94. I couldn't, sir.

21 Q. That is Ms. McNeil?

22 A. Yes.

23 Q. Under any circumstances, Ms. McNeil?

24 A. No.

25 Q. Okay; thank you.

26 A. (By Juror Mr. William D. Jenkins) I could not.

27 Q. Okay, what is that number, sir?

28 A. 97.

29 Q. That is Mr. Jenkins?

1 A. Yes, sir.

2 Q. And Mr. Jenkins, you couldn't do it under any  
3 circumstances at all?

4 A. No, sir.

5 Q. Okay, thank you.

6 BY THE COURT:

7 Q. Yes, sir; back at the back.

8 A. (By Juror Mr. Gary Dye) I could not.

9 Q. That is 98?

10 A. Yes, sir.

11 Q. That is Mr. Dye. Mr. Dye, you couldn't under any  
12 circumstances?

13 A. No, sir.

14 Q. Okay. Thank you.

15 BY THE COURT:

16 Okay, now is there anybody here and I kind of asked  
17 this question of one of you while ago, but is there anybody  
18 here that if the jury found this Defendant guilty, then would  
19 go in there and automatically vote for the death penalty,  
20 whether it was justified by the facts or not? Of course, you  
21 couldn't do it if I didn't authorize it by law. But if the  
22 facts didn't justify it, would you just do it automatically  
23 just because you found him guilty? Anybody?

24 Now I'm going to ask a similar question, but it  
25 really has different connotations, and that is do any of you  
26 have any religious - and if you have already answered this  
27 about the death penalty, you don't have to answer it again.  
28 But do any of you that have not answered along those lines have  
29 any religious or philosophical beliefs that would prevent you

1 from passing judgment on another human being in any case,  
2 whether it was death penalty or not. I have that answered a  
3 lot, and that is okay. Anybody? Okay.

4 Other than those of you that have already answered  
5 up, is there anybody else-- well, I will just put it to you.  
6 Is there anybody who has not answered this question this way?  
7 Anybody feels that they cannot be a fair and impartial juror  
8 for any reason other than those of you who have already said  
9 you can't?

10 Okay, the panel is tendered to the State for voir  
11 dire.

12 (The Court and Mr. Evans confer briefly out of  
13 the hearing of the Court Reporter.)

14 FURTHER VOIR DIRE BY THE COURT:

15 I did have, I had one other question I needed to ask  
16 you, and I had it written down and just didn't look at my own  
17 notes. It will be necessary in this case because it's  
18 obviously going to go past one day; it will probably, as I told  
19 you, it will probably go most of this week. By law the jury  
20 must be sequestered. In other words, you have got that in your  
21 letter, so most of you knew that to begin with. What that  
22 means is that we will house you, and I think in this particular  
23 case, I think it is going to be at the Ramada Inn. You will be  
24 sequestered and under the direction of the bailiffs who I am  
25 going to appoint later this afternoon. And of course, we are  
26 going to feed you and give you a place to stay, but you are  
27 going to be kind of out of communication with the rest of the  
28 world until this case is over.

29 And is there anybody because of that fact that feels

1 like because they are sequestered or they are going to be kind  
2 of out of contact with their families and friends or whatever  
3 during the duration of this trial, it would affect you to the  
4 point to where you couldn't give a fair hearing to this case?  
5 In other words, would you hurry up what you were doing in order  
6 to go back home or anything like that? Anybody that would be  
7 affected in any way by that?

8 A. (By Juror Ms. Rachel F. Foote) My mother is in a  
9 nursing home, and she has been there five years and paralyzed.  
10 And if something happened to her, I, that would be-- I just  
11 couldn't concentrate.

12 Q. Okay, now let me say this. There are going to be  
13 alternates in this case, and every one of us could have  
14 something. I mean I could have something happen to my family,  
15 and the District Attorney and the Defense attorneys and  
16 everybody could have that problem. That's why I am going to  
17 have alternates. So if that occasion occurs, then we will just  
18 have to address it at that point. It would only have an effect  
19 as to when you went into deliberations on this case. At that  
20 time I couldn't put an alternate in, but up until that time,  
21 anything while we were taking testimony, if an emergency comes  
22 up, then I have a way to address that.

23 Now there were some other hands. Okay. Yes, sir.

24 A. (By Juror Mr. William Bryan Green) Your Honor, I am a  
25 full time student at the University of Mississippi. If I could  
26 have some way to stay in contact with my instructors to keep up  
27 to date with my class assignments and research, I would not  
28 mind at all doing this.

29 Q. Okay, I tell you what we can do. I can have-- could

1 your wife get that for you?

2 A. She probably could, but there are some instructors I  
3 will have to talk with them directly about some research that I  
4 am doing.

5 Q. All right, sir. I couldn't let you talk directly to  
6 them. I can get the instructions from them and your  
7 assignments and stuff like that, and I can provide you with  
8 those things that are necessary to make, necessary materials to  
9 handle that, but I couldn't let you talk directly to them. All  
10 your conversations would either have to be directed at me or  
11 through the bailiffs. And really most of the conversations  
12 can't even be directed directly to me. They would have to come  
13 through the bailiffs, but I can have a way for you to  
14 communicate with your instructors.

15 A. Okay, sir. If that could be arranged, Your Honor, I  
16 am satisfied.

17 Q. All right, sir.

18 A. Thank you.

19 BY THE COURT:

20 Q. Yes, ma'am?

21 A. (By Juror Ms. Mary Beth Smallwood) I am a stay at  
22 home mom, and I have got a 2 year old and a 4 year old, and I  
23 have got makeshift accommodations for them right now, but  
24 nothing beyond, you know, the end of this week.

25 Q. Okay, what I am, I am reluctant to predict how long  
26 the case will go because I just, I never know. I do think  
27 though, my judgment from having done this before, it probably  
28 at the latest would probably not go through next Tuesday.  
29 Would that present a problem?

1 A. Yes, sir.

2 Q. Okay. What number is that, please, ma'am?

3 A. 63.

4 Q. Okay.

5 BY THE COURT:

6 Q. Okay, yes, sir.

7 A. (By Juror Mr. Larry T. Gentry) I am chief financial  
8 officer for a manufacturing company, and if I couldn't stay in  
9 some kind of daily contact, it would present quite a problem.

10 Q. Let me put it this way, and of course, that is what  
11 we did when we went through qualification this morning. The  
12 point I have, we have to discuss now is whether that fact would  
13 distract you from what your duty would be here?

14 A. I think over a protracted period of time, it very  
15 well could.

16 Q. Okay. That is Mr. Franks?

17 A. Gentry.

18 Q. I am sorry. I have got two numbers, and I always  
19 look at the wrong one.

20 BY MR. BILLY GILMORE: 41, Judge.

21 BY THE COURT: I got it.

22 BY THE COURT:

23 Q. Ms. Smallwood, what is your number?

24 A. (By Juror Ms. Mary Beth Smallwood) 63.

25 BY THE COURT:

26 Q. Okay. Was there another hand? Yes, ma'am.

27 A. (By Juror Ms. Vanessa Townsend) I am a single parent,  
28 and I have to stay home with my kids at night.

29 Q. Got nobody at home?



1 A. No.

2 Q. Okay, what is your number?

3 A. 23.

4 Q. 23. It would distract you to be here?

5 A. Yes.

6 Q. Well, I guess you just have got nobody to keep them.  
7 I guess you just can't do it then because you are going to have  
8 to spend the night.

9 A. (By unidentified male juror) Are they going to be  
10 any-- can we like have an outside activity? I mean are we  
11 going to be able to go outside every now and then? (Laughter).

12 Q. Let me put it this way. I don't know how many of  
13 y'all read it, but I'm not John Grisham. So I can't treat you  
14 as good as they do in his books on the coast. I can't take you  
15 to Mary Mahoney's to eat or necessarily, but yeah, there will  
16 be -- what we are going to do is we are going -- when we are  
17 here during the day, it is going to be just like we were at  
18 work. I mean we are going to work pretty much through. When  
19 we take breaks, you will have, I will make sure that you get  
20 some relief. It has to be in the context of the bailiffs being  
21 with you because you have to be sequestered. If we go into the  
22 weekend, then I am going to make some arrangements for us to,  
23 so you won't be just holed up in a motel room all weekend. So  
24 yes, I am going to do that. As to what I'm going to do right  
25 now, I don't know. Okay?

26 A. (By Juror Mr. Pat Riggs) Your Honor. When we had  
27 talked about it before about finding the death penalty, I said  
28 I possibly could. I really don't think I could.

29 Q. Okay. That last question didn't bring that on, did

1 it? (Laughter)

2 BY THE COURT:

3 Q. Yes, sir; Mr. Valentine.

4 A. (By Juror Mr. Kenneth H. Valentine) When you asked  
5 earlier this morning, I neglected or I forgot what this weekend  
6 was. But I am scheduled to be the official starter for the  
7 North Half Regional High School Swim Meet in Cleveland,  
8 Mississippi, this weekend. I am the certified starter for that  
9 event.

10 Q. Well, of course, the question is-- I mean we have  
11 gotten to this point now. The question is, Mr. Valentine, is  
12 would that distract you from your duties here to where you  
13 could not decide this case properly?

14 A. Only if they couldn't get another starter.

15 BY THE COURT: Okay. All right. Tender to the  
16 State.

17 BY MR. EVANS: Thank you, Your Honor.

18 VOIR DIRE EXAMINATION BY MR. EVANS:

19 Good morning, ladies and gentlemen.

20 BY THE JURY PANEL: Good morning--

21 BY MR. EVANS:

22 --or evening. We have made it past morning. As the  
23 Judge told y'all, I am Doug Evans. I am the District Attorney  
24 for the Fifth Circuit Court District just like Johnny Young is  
25 y'all's District Attorney over in this side. This case, as the  
26 Judge told you, is a case that has been transferred here from  
27 our district.

28 Now before I go into my questions on voir dire, I  
29 have got one important issue that I want to bring up, and

1 hopefully this wouldn't affect anybody, but it is something I  
2 have to ask. Is there anybody here on this panel that because  
3 this crime did not occur in Tupelo, would just say, well, I  
4 don't care what happened because that didn't affect us? So is  
5 there anyone here that would feel that just because this crime  
6 occurred somewhere else and we are coming here to try it, that  
7 they couldn't give it just as much attention as if this was a  
8 crime that had occurred right here in Tupelo? Anyone at all?  
9 (No response).

10 All right. Y'all will be glad to know, I'm not going  
11 to go quite as long as the Judge did on voir dire. He has  
12 asked most of the questions. Some of them we will need to  
13 touch back over just a little bit, but it gets shorter as it  
14 goes.

15 As the Judge has told you, this is a death penalty  
16 type case. The reason it's a death penalty type case is in our  
17 state law the Legislature sets up certain crimes that the death  
18 penalty is a proper punishment for. In this particular case  
19 the reason that the death penalty is a punishment that can be  
20 considered is that this crime has occurred to be a murder that  
21 was committed during a robbery. Does anyone here on this  
22 panel, other than the ones that have answered-- now I don't  
23 want everybody that has gone through the Judge's questions and  
24 said they couldn't sit for one reason or other answering  
25 again. But other than those, is there anyone else here on this  
26 panel today that feels that a murder committed during a robbery  
27 shouldn't be a death penalty type case? Anyone at all? (No  
28 response).

29 All right, I'm going to go into a few of the ones of

1 you that made some comments about the death penalty. Juror  
2 number 2, Ms. Holley. The way I wrote down what you were  
3 saying is that you were undecided about whether you could vote  
4 for the death penalty, but you were leaning against the death  
5 penalty. Is that correct?

6 A. (By Juror Ms. Colleen Marie Holley) That's correct.

7 Q. And I know y'all started out on this end, and then  
8 once it got to the other end, I think it got to going a little  
9 bit quicker. But after hearing the questions and the answers  
10 between the Judge and other jurors, do you now feel that you  
11 could or could not vote for the death penalty in this case if  
12 the law authorized it and the facts justified it?

13 A. I honestly can't answer yes or no.

14 Q. All right.

15 A. It would have to be in the circumstances.

16 BY THE COURT: I'm sorry; I didn't hear your  
17 answer, ma'am?

18 A. I can't honestly answer to that. I mean I would have  
19 to go through it and hear everything. I can't say yes or no  
20 for a fact.

21 BY MR. EVANS:

22 Q. Would it preclude, would your beliefs against the  
23 death penalty preclude you from being able to consider the  
24 death penalty as a proper punishment?

25 A. No.

26 Q. Okay.

27 BY MR. EVANS:

28 Q. Juror number 6, Ms. Poole.

29 A. (By Juror Ms. Lottie Poole) Yes.

1           Q.    You also said that you were against the death  
2 penalty; is that correct?

3           A.    Yes, I did.

4           Q.    And of course, this is a death penalty type case.  
5 After you have heard the other comments that were made here  
6 today, is it your belief that you could or could not vote to  
7 impose the death penalty if the law justified it and the facts  
8 justified it?

9           A.    I would have to hear all the facts.

10          Q.    All right, but the question boils back to the one  
11 question. If you heard the facts and believed from the facts  
12 that it was the proper penalty and the Judge told you that it  
13 was a proper penalty to consider, would your beliefs against  
14 the death penalty prohibit you from considering the death  
15 penalty?

16                   (COURT REPORTER'S NOTE: The Court sits down in  
17 the jury box.)

18                   BY THE COURT: I can't hear her back here is the  
19 reason I'm sneaking up on you.

20 BY MR. EVANS:

21          Q.    Yes, sir.

22          A.    (By Juror Ms. Poole) No.

23          Q.    You need to answer out loud, if you will--

24          A.    No.

25          Q.    The Court Reporter has to take down everything.  
26 Other than the ones that have already answered, is there anyone  
27 else here today that just does not believe in the death  
28 penalty?    Anyone at all?

29                   All right, this is another area that I try not to go

1 over and over things that the Judge covers, but I find that at  
2 least 50 percent of the trials that we try somebody usually  
3 comes back and responds to this when I get back up because it's  
4 a question that probably none of you have ever thought of  
5 before. And that is whether any of you have any personal or  
6 religious beliefs that prohibit you from sitting in judgment of  
7 someone else? And just to give you an example: What would  
8 happen if we picked anyone on this jury that had that belief or  
9 even thought they might have that belief? We could go through  
10 a week or a week and a half of trial, and when the jury went  
11 out to deliberate, that one juror might just throw their hands  
12 up and say, I'm sorry; I just don't think it's right for me to  
13 judge anyone else. And we would have wasted the entire trial,  
14 so that is why it is so important. If anyone on this panel  
15 even feels like they might have a belief that they couldn't sit  
16 in judgment of someone else and return a verdict, please raise  
17 your hand and let us know at this time. Yes, ma'am. If you  
18 would, stand, please.

19 A. (By Juror Ms. Gladys Pearl Baker) I could not pass  
20 judgment on anybody.

21 Q. And you are number 86?

22 A. Yes, sir.

23 Q. Thank you, ma'am.

24 BY MR. EVANS:

25 Q. As the Judge has told you, that is fine, but it would  
26 affect the trial so that is why it is so important. Anyone  
27 else here that feels like that? Yes, ma'am. Your number,  
28 please?

29 A. (By Juror Ms. Cynthia Northington) Number 81.

1           Q.   81. All right. Anyone else? And as the Judge has  
2 told you, if any of y'all think of anything that you need to  
3 change your answer on, just please speak up at any time and let  
4 us know.

5           Other than the ones of you-- back on the death  
6 penalty for a minute; other than the ones of you that have  
7 already answered, is there anyone else here that is unsure  
8 whether they could consider the death penalty? Yes, ma'am;  
9 your number?

10          A.    (By Juror Ms. Frances L. Miller) 35.

11          Q.    Number 35. Ms. Miller?

12          A.    Yes, sir.

13          Q.    All right, Ms. Miller, as far as your being unsure,  
14 is that that you are unsure whether you could consider that as  
15 a possible punishment or not?

16          A.    I don't know whether I could actually say or not.

17          Q.    Okay.

18          A.    I mean I don't. I just don't know whether I could do  
19 it or not.

20          Q.    All right, thank you.

21          A.    I never have been faced with it.

22          Q.    Yes, ma'am. Of course, probably that is true for  
23 probably most of the people or everybody in this room. But  
24 that is why it is so important just like you are doing now,  
25 that you think about these things, and if you do have some  
26 uncertainties, that you answer so that we know. What it is  
27 going to boil down to, what we are going to need to know is  
28 basically a yes or no answer. It's are your beliefs against  
29 the death penalty such that you don't feel that you could vote

1 for the death penalty even if the law authorized it and the  
2 facts justified it?

3 A. Well, I don't believe I could, not and live with  
4 myself for doing something.

5 Q. Yes, ma'am. All right, thank you, ma'am.

6 BY MR. EVANS:

7 Q. Yes, sir.

8 A. (By Juror Mr. Clyde A. Fields, Jr.) I am 37.

9 Q. All right, sir. And what would your response be?

10 A. I don't believe I could vote for it.

11 Q. Under any circumstance, regardless of the law or what  
12 the facts of the case were; is that correct?

13 A. No, sir, because I feel like some people should have  
14 gotten the death penalty that didn't get it. Some people get  
15 off and some don't.

16 Q. All right. I appreciate your answer.

17 A. Yes, sir.

18 BY MR. EVANS:

19 Q. Anyone else that is uncertain about their feelings  
20 about the death penalty? Yes, ma'am.

21 A. (By Juror Ms. Lottie Poole) I have this uncertainty  
22 about it.

23 Q. And you are juror number 6 for the record?

24 A. Yes; right.

25 Q. All right, Ms. Poole, I know this seems to be  
26 something that may be worrying you at this point--

27 A. Yeah.

28 Q. --trying to decide which way to go.

29 A. Right.



1           Q.    Do you think that your beliefs against the death  
2 penalty are such that it would prohibit you from sitting on  
3 this particular case and rendering a judgment?

4           A.    Yeah, I do.

5           Q.    Thank you, ma'am.

6 BY MR. EVANS:

7           Q.    Anyone else?   Do any of you belong to any church or  
8 group that opposes the death penalty?   And again, I'm talking  
9 about other than the ones that have already answered to these  
10 questions? (No response).

11                   And again, the Judge slightly went into this, but I  
12 want to cover it just a little bit more.   Do each of y'all  
13 understand that a death penalty trial is in two phases?   The  
14 first phase only deals with guilt or innocence.   Each of y'all  
15 understand that?   And it's only after the jury finds the  
16 Defendant guilty, that we go into the second phase which is  
17 what the proper penalty would be.   In this case if we go into  
18 that second phase, if the jury convicts the Defendant in this  
19 case, the Judge will give you instructions, and you are to take  
20 those instructions and go through them to determine step by  
21 step whether the death penalty is a proper punishment by law.  
22 Will each of you that have not already given a reason that you  
23 couldn't sit on this case tell us that you will follow those  
24 instructions, go through them step by step, and do what the  
25 Court tells you in those instructions?   Is there anybody that  
26 would not?

27                   The burden of proof in any criminal case is always on  
28 the State of Mississippi.   All that means is that it's up to us  
29 to prove to the jury that this Defendant is guilty beyond a

1 reasonable doubt. That is the same burden of proof in any case  
2 though. Do each of you understand that the burden of proof is  
3 no higher in a capital murder case than it would be in a grand  
4 larceny or a burglary? The burden of proof is always on the  
5 State, and it's always the same burden of proof in any case.  
6 Does everyone understand that?

7 Does anyone believe that because this is a capital  
8 murder case and we are seeking the death penalty, that we  
9 should have a higher burden, like we should be able to prove  
10 beyond all doubt? Will each of you tell us that you will  
11 follow the instructions and require us to prove him guilty  
12 beyond a reasonable doubt?

13 Again, the Judge touched on this, but I want to go a  
14 little deeper into this too. Under our law, and it's the way  
15 the law should be; at this phase in the trial if any twelve of  
16 you were picked to serve on this jury and were asked to vote on  
17 guilt or innocence, under your oath you would have to vote not  
18 guilty at this point. The reason is very simple. We have put  
19 on no proof, so we have not proven beyond a reasonable doubt at  
20 this point the Defendant is guilty. Do each of y'all  
21 understand that theory?

22 The opposite side of that is just as simple. Once we  
23 have proven our case to you beyond a reasonable doubt, that  
24 presumption of innocence disappears and no longer protects the  
25 Defendant. Does anyone have any problem with that theory of  
26 law? Will each of you tell us that you do understand that once  
27 we have proven our case beyond a reasonable doubt, that there  
28 is no presumption of innocence that goes with the Defendant any  
29 more?

1           Now the Judge asked about any of you on the panel  
2           that have been charged with a felony, and one other question  
3           that we need to ask in regard to that, and I'm not going to go  
4           into details of this either, but we need to know the general  
5           answer. Is there anyone else on the panel that has had a  
6           family member or a close friend that has been charged with a  
7           felony? And by a felony, that would be any crime that could  
8           carry a penitentiary time, whether they actually served time or  
9           not. Yes, ma'am. Number 6?

10          A.    (By Juror Ms. Lottie Poole) My grandson.

11          Q.    All right. And is there anything about that that  
12                would cause you any difficulty in being fair and impartial in  
13                this case?

14          A.    No.

15       BY MR. EVANS:

16          Q.    Okay. And yes, ma'am.

17          A.    (By Juror Ms. Tinnona Levet Patterson) My brother.

18          Q.    And what is your number?

19          A.    Number 27.

20          Q.    27.

21                BY THE COURT: What was that first number?

22                BY MR. EVANS: 6.

23                BY THE COURT: The second one?

24                BY MR. EVANS: 27.

25          Q.    All right, Ms. Patterson?

26          A.    Yes, sir.

27          Q.    Is there anything about the fact that you had a  
28                family member that was charged with a felony that would affect  
29                your ability to be fair and impartial in this case?

1 A. No, sir.

2 Q. And, of course, unless it was in the Fifth District,  
3 I wouldn't have been the one that was prosecuting that case  
4 anyway. But sometimes we do have jurors that say because they  
5 have had family members that were prosecuted, that it would  
6 affect them?

7 A. It was up in Detroit.

8 Q. All right. Thank you.

9 BY MR. EVANS:

10 Q. Yes, ma'am; your number?

11 A. (By Juror Ms. Brenda Tiggs) 26.

12 Q. 26. Ms. Tiggs, is there anything about the fact that  
13 you had a family member that was charged with a felony that  
14 would affect you in this particular case?

15 A. No.

16 BY MR. EVANS:

17 Q. Anyone else on that same row? Yes, ma'am.

18 A. (By Juror Ms. Tracey Edwina Smith) My brother-in-law.

19 Q. You are number 29?

20 A. Yes.

21 Q. Is there anything about that that would affect you in  
22 this case?

23 A. No.

24 BY MR. EVANS:

25 Q. Okay. All right, going on further back on the next  
26 row. Yes, sir.

27 A. (By Juror Mr. Gregory Allen Hayse) I'm not sure  
28 felony or what. About five years ago my stepson, he was 16,  
29 got involved with someone that had stolen some CB radios out of

1 a parked truck or something and had given them to my son, and  
2 he was caught with them. He spent, I think it was three months  
3 in Oakley Reform School and released after, I think about two  
4 months, and his record was erased.

5 Q. That wouldn't be a felony. But is there anything  
6 about that that would affect you in this case?

7 A. Oh, no, sir. No, sir.

8 Q. Thank you, sir.

9 BY MR. EVANS:

10 Q. Yes, sir.

11 A. (By Juror Mr. Larry T. Gentry) I had a cousin  
12 convicted of a felony.

13 Q. Your number, please, sir?

14 A. 41.

15 Q. Is there anything about that that would affect you in  
16 this particular case?

17 A. Absolutely, it would not.

18 BY THE COURT: What was his answer?

19 BY MR. EVANS: It absolutely would not.

20 BY THE COURT: That's what I thought.

21 BY MR. EVANS:

22 Q. All right, going on back from that row. Yes, ma'am,  
23 your number, please?

24 A. (By Juror Ms. Reba A. Floyd) 56.

25 Q. Number 56. Ms. Floyd?

26 A. Yes, sir.

27 Q. Is there anything about the fact that you have had a  
28 family member charged with a felony that would affect you in  
29 this particular case?

1 A. No, sir.

2 Q. All right.

3 BY MR. EVANS:

4 Q. Anyone else on that row? All right, going on back  
5 from that row, is there anyone else? Yes, sir; Mr. Valentine?

6 A. (By Juror Mr. Kenneth H. Valentine) 62. Yes, sir.  
7 No, sir; it wouldn't affect me.

8 BY MR. EVANS:

9 Q. All right, and going on back from there, anyone  
10 else? Yes, sir.

11 A. (By Juror Mr. David Wayne Lindley) 73.

12 Q. 73?

13 A. Yes.

14 Q. And is there anything about that that would affect  
15 you in this particular case?

16 A. No.

17 BY MR. EVANS:

18 Q. Anyone else? Okay, I can see a hand, but I can't--  
19 what number?

20 A. (By Juror Ms. Pamela Jean Hale) 87.

21 Q. All right. Ms. Hall? Ms. Hale?

22 A. Yes.

23 Q. Is there anything about the fact that you have had a  
24 family member charged that would affect you in this particular  
25 case?

26 A. Yes.

27 Q. There is?

28 A. Yes.

29 BY MR. EVANS:

1 Q. All right. Yes, ma'am?

2 A. (By Juror Ms. Jennie Lou Buchanan) 89.

3 Q. Ms. Buchanan. Is there anything about the fact that  
4 you have had a family member charged that would affect you in  
5 this particular case?

6 A. No.

7 Q. Okay, thank you.

8 BY MR. EVANS:

9 Q. Anyone else? Okay.

10 A. (By Juror Ms. Joyce N. McArthur) 92. And it  
11 wouldn't affect me.

12 Q. All right, thank you.

13 BY MR. EVANS:

14 Q. I saw one more hand.

15 A. (By Juror Ms. Linda Edwards) 67.

16 Q. Yes, ma'am. Ms. Edwards, is there anything about the  
17 fact that you have had a family member charged that would  
18 affect you in being fair and impartial in this particular case?

19 A. No, sir.

20 Q. Thanks. Anyone else? (No further response).

21 In any criminal case the Judge is the one that tells  
22 you what the law is, but you as the jury are the ones that  
23 determine the facts of any given case. And in any case that I  
24 have ever seen that goes to trial there may be conflicts in  
25 testimony. If there are conflicts in testimony, is there  
26 anyone here in this panel today that feels that they would have  
27 the opinion or belief that they would not be able to weigh out  
28 the evidence and determine what weight and credibility to give  
29 each witness, and they would just have to say well, since there

1 is different opinions, different statements, I can't make a  
2 decision? Anyone here at all that would feel like that?  
3 Because that is one of the main goals of a jury is to weigh the  
4 evidence and determine what happened in any given case. So it  
5 is necessary always that the jury be able to decide how much  
6 weight and credibility to give each witness.

7 Now as the Judge told you earlier, any witness that  
8 testifies you are supposed to consider their testimony the same  
9 as any other, but you as the jury are the ones that determine  
10 what weight and credibility to place on each witness after you  
11 have heard them testify. Is there anyone here that could not  
12 do that?

13 Other than the ones of you that have already  
14 answered, is there anybody else here on this panel today that  
15 feels that they could not listen to the evidence and reach a  
16 fair decision in this case based strictly on the evidence and  
17 the testimony?

18 Your Honor, I will tender the panel.

19 VOIR DIRE EXAMINATION BY MR. BILLY GILMORE:

20 Good afternoon, ladies and gentlemen.

21 BY THE JURY PANEL: Good afternoon.

22 BY MR. BILLY GILMORE:

23 As the Judge has said, I am Billy Gilmore, and my son  
24 and I are representing the Defendant in this case. I will  
25 probably be the briefest of the three that have been up here  
26 today talking to you.

27 Now the Judge and the District Attorney both have  
28 told you that the Defendant is presumed innocent at this  
29 point. I believe the District Attorney said if twelve of you



1 were selected and you were asked to vote now, you would have to  
2 vote not guilty. Does everybody understand that, that the  
3 Defendant doesn't have to prove anything? He is presumed  
4 innocent under the law, that the State has the burden to prove  
5 him guilty beyond a reasonable doubt. The Defendant doesn't  
6 have to do anything. He is presumed innocent until that burden  
7 has been met by the State. Anybody have any problem with  
8 that? If you do, shake your head. I know you are getting  
9 tired. (No response) Okay.

10 Let's talk about reasonable doubt. Now Mr. Evans  
11 went over that with you. The proof is reasonable doubt, not  
12 all doubt because if it was all doubt, you would probably have  
13 to be a witness. But will you hold the State to the burden by  
14 proving beyond a reasonable doubt? In other words, in your  
15 mind if you have doubt throughout the trial, and at the end of  
16 the trial and that has not been removed, do you have any  
17 problem voting not guilty? Any of you have a problem? All  
18 right.

19 There will be twelve of you in the jury room when  
20 this is over with. All right, if you have that doubt, at that  
21 time will you vote not guilty?

22 BY MR. EVANS: Your Honor, I'm going to have to  
23 object on that for one thing. He has not said a  
24 reasonable doubt; plus I think it is improper to try  
25 to make a jury say whether they will or will not vote  
26 on guilt or innocence until they have heard the  
27 evidence.

28 BY THE COURT: That is true and, of course, they  
29 have been asked that particular question by myself

1           and the District Attorney. So if you are going to  
2           ask it, ask it in the proper form, but it really has  
3           been asked and answered.

4           BY MR. BILLY GILMORE: All right.

5           But if you have this doubt in your mind--

6           BY THE COURT: Reasonable doubt.

7 BY MR. BILLY GILMORE:

8           Reasonable doubt, when I'm talking, when I say  
9           "doubt," I'm talking about reasonable doubt. When you go into  
10          the jury room and there is still a reasonable doubt in your  
11          mind, will you vote not guilty?

12          And the fact whether the Defendant testifies or does  
13          not testify cannot be used against him. I believe the Judge  
14          has mentioned that, and he will probably tell you that at the  
15          end of the trial. Whether he testifies or does not testify is  
16          not proof one way or the other. The fact that he does not  
17          testify, will any of you hold that against him? If you do,  
18          hold up your hand? (No response).

19          Now on a capital murder trial, as Mr. Evans has said,  
20          it has to be a murder committed during another act, another  
21          crime. In this indictment it is charged a murder during an  
22          armed robbery. Now the armed robbery has elements of the  
23          crime, and also capital murder has elements of a crime. And  
24          the Court will instruct you as to what that law is at the end  
25          of the trial. If the State fails to prove to you beyond a  
26          reasonable doubt that they have met the burden to prove these  
27          elements of the crime, do you have any problem voting not  
28          guilty? If you do, hold up your hand.

29          In other words, you won't have any problems following

1 the instructions of the law when the Judge gives them at the  
2 end of the trial? Okay.

3 Let me get into the, what we call the bifurcated  
4 trial, in other words, two parts. It's just that simple. It's  
5 two parts. First, you have to have a trial to decide the guilt  
6 or innocence. If, in fact, the jury comes back and says not  
7 guilty, there won't be a second phase. There won't be a second  
8 trial. Do you understand that? There would only be a second  
9 part if there is a guilty verdict come in by twelve jurors.  
10 And do you understand in order to come back with a guilty  
11 verdict or a not guilty verdict, it takes all twelve of you to  
12 vote that way? Do you understand that?

13 On the other hand, if eleven votes guilty and one of  
14 you has a reasonable doubt, will you continue to vote that  
15 unless for some reason in your talk with the other jurors, will  
16 you stick with voting not guilty? In other words, you won't  
17 let other jurors persuade you of guilt if you feel like it's a  
18 not guilty verdict should come in?

19 BY MR. EVANS: Your Honor, again I hate to  
20 interrupt, but that is not the proper way that the  
21 Court will instruct the jury, and I think it's a  
22 little misleading the way he worded it.

23 BY THE COURT: Mr. Gilmore, you need to word  
24 it--

25 BY MR. BILLY GILMORE: --All right, sir.

26 BY MR. BILLY GILMORE:

27 I'm not saying if when you get back in the jury and  
28 you feel like the State has failed to prove beyond a reasonable  
29 doubt, you can't change your mind. What I'm saying, if you are

1 convinced beyond a reasonable doubt of the innocence of the  
2 Defendant, will you stick with that?

3 Okay, now we feel like the State will probably put on  
4 a circumstantial case. Now there is two ways you put on  
5 proof. One is direct testimony, direct evidence, and then  
6 there is cases by circumstantial evidence. In other words, you  
7 don't always have eye witnesses to every crime. If the State  
8 puts on their case by circumstantial evidence, will you make  
9 them prove to you beyond a reasonable doubt that the Defendant  
10 is, in fact, guilty before you will vote guilty?

11 If y'all are not agreeing, if you will just raise  
12 your hand. I'm not going to make you raise your hand every  
13 time I ask you a question. In other words, if the State fails  
14 to prove beyond a reasonable doubt, then all I'm asking will  
15 you vote not guilty? Anybody got any problem with that? The  
16 State has the full burden throughout this trial to prove the  
17 Defendant guilty beyond a reasonable doubt. And if they fail  
18 to do it, then will you vote not guilty? Okay.

19 Is there anybody got anything that will cause you not  
20 to vote not guilty along this line? I think the Judge has gone  
21 into it, and one or two of you have answered the fact that he  
22 is charged is not proof. The fact that he is charged with this  
23 crime, will you not hold that against him until the State  
24 proves beyond that reasonable doubt whether he is guilty or  
25 innocent, or guilty? Any of you have any problem with that?

26 Is there anything whatsoever that you haven't  
27 discussed either with the Judge or the District Attorney or us  
28 as Defense lawyers that would hinder you in being fair to the  
29 Defendant? This is what this court system is about is to give

1 a fair verdict to both sides; be fair. That's what we are  
2 asking. Will you be fair to the Defendant?

3 And I think the District Attorney went into this.  
4 The fact that this is something that happened down in Winona in  
5 Montgomery County, he asked you would it make any difference if  
6 it had happened here in Tupelo. On the other hand, the fact  
7 that the Defendant is from Winona; the victims are from Winona;  
8 probably most of the witnesses will be from Winona; will you  
9 hold that against the Defendant? The fact that he is up here  
10 and y'all are sitting in judgment of him? Will you hold that  
11 against the Defendant? I presume everybody is saying no.  
12 Okay.

13 All we are asking is be fair. Thank you very much.

14 **BY THE COURT:** Let me see y'all just a second.  
15 This doesn't have to be on the record, Linda.

16 (Off the record discussion between the Court and  
17 Counsel during which the Reporter approached the  
18 Court and told him that three of the jurors had  
19 gotten up to leave the courtroom during their  
20 conference.)

21 **BY THE COURT:** Wait; wait a minute. You can't,  
22 jurors, I am not through asking you questions. Did  
23 the Bailiff let somebody go? I'm not going to have  
24 but about two or three more, but I have got a couple  
25 I have got to ask you first.

26 (Further brief off the record conference between  
27 the Court and Counsel.)

28 **BY THE COURT:** I'm going to let y'all go in just  
29 a second and take a break. I have one question I can

1 ask while--

2 BY THE COURT REPORTER: --Judge, there is about  
3 three of them that left.

4 BY THE COURT: I know, but I am not going to ask  
5 them this question.

6 FURTHER VOIR DIRE BY THE COURT:

7 Q. This is Ms. Hale's question. Where is Ms. Hale? Did  
8 she go?

9 A. (Juror number 87, Ms. Pamela Jean Hale, raised her  
10 hand.)

11 Q. Ms. Hale, I may have missed what the District  
12 Attorney asked you, but you had somebody charged with a crime  
13 in your family, and you said that might affect you; is that  
14 correct?

15 A. Yes, sir.

16 Q. You don't think that you could set that aside and be  
17 a fair and impartial juror in this case?

18 A. No, sir.

19 Q. Okay. Thank you, Ms. Hale. Let me get those other  
20 folks back.

21 A. (By Juror number 35, Ms. Frances L. Miller) Can you  
22 clear something up for me, please, sir?

23 Q. I will try.

24 A. Say the jury come up with a guilty verdict, does that  
25 automatically mean the death penalty or not?

26 Q. No, ma'am. And that's what I want y'all to  
27 understand. It does not mean that at all. We have a second  
28 trial if that happens; the same jury, second trial, and we will  
29 probably go right on into it. But it just means then we will

1 go into the sentencing portion of the trial. At the end of  
2 that trial-- at the end of the first trial, I'm going to give  
3 you some instructions that concerns the guilt or innocence of  
4 the Defendant, instructions on the law. At the end of the  
5 second trial, I'm going to give you some more instructions that  
6 tell you how, you know, what you can do in relation to  
7 sentencing. One of the options that you will have will be the  
8 death penalty, but you will have other options. There will be  
9 options like life without parole, or there will be some options  
10 of just life. But there will be other options that you can  
11 entertain. So it's not automatic. I want y'all to  
12 understand. I need to know if anybody feels that it is  
13 automatic?

14 A. (By Juror Ms. Miller) I didn't know.

15 Q. Okay, fine. Did I clear that up for you, ma'am?

16 A. Yes, sir. That is fine.

17 (NOTE: ALL PROSPECTIVE JURORS WERE NOW BACK IN  
18 THE COURTROOM. THEY RETURNED DURING THE PREVIOUS  
19 DISCOURSE WITH JUROR 35.)

20 **BY THE COURT:**

21 Q. Okay. I think I know the answer to this question  
22 before I ask it. Anybody, any of y'all know Ms. Tardy, Bertha  
23 Tardy? Did anybody know her? Did anybody know Robert Golden,  
24 Derrick Stewart, or Carmen Rigby? Anybody know those folks or  
25 kin to them in any way? (No response).

26 **BY THE COURT:** Okay. Ladies and gentlemen, that  
27 completes the voir dire. I have to consult with the  
28 attorneys, and then they have got to consult with  
29 themselves and get back with me to pick the jury.



1 That, it will take them about an hour because as you  
2 can see, we have been here two hours now just asking  
3 questions. They have got to digest all that, and it  
4 will take them about an hour to do that. Then they  
5 will meet with me; we will come back in here, and I  
6 will announce who is on the jury. The rest of you  
7 will be allowed to leave at that particular time, and  
8 we will seat the jury. And it's possible we may have  
9 like opening statements this afternoon or something.  
10 We will make that determination when we get back.  
11 I'm going to let you go for an hour. Let's be back  
12 at 4:15.

13 The same instructions I gave you at lunch apply  
14 now. You can't talk-- you know a little bit more  
15 about the case now, but you have still heard no  
16 evidence. You cannot form an opinion. You can't  
17 discuss it amongst yourselves. You can't discuss it  
18 with anybody else. You can't allow anybody to  
19 discuss it with you or in your presence, and you  
20 certainly can't talk to any media representative  
21 about it at all. See you at 4:15.

22 BY JUROR NUMBER 14, CHARLES ALSTON SUMNER:  
23 Judge, I have a question for you.

24 BY THE COURT: Yes, sir.

25 BY PROSPECTIVE JUROR, MR. SUMNER: You said  
26 investigators that were involved in it, but I saw an  
27 investigator in here earlier that I know, and I don't  
28 know if he is involved in the case or not, but I  
29 wanted to let you know. Robert Jennings was in



1 here.

2 BY THE COURT: Robert Jennings?

3 BY PROSPECTIVE JUROR, MR. SUMNER: Yes, sir.

4 BY THE COURT: He is the District Attorney's  
5 investigator. Would the fact that you know him  
6 affect you in any way in this matter?

7 BY PROSPECTIVE JUROR, MR. SUMNER: No, sir. I  
8 just wanted to let you know that I do know him.

9 BY THE COURT: Thank you, sir. All right,  
10 gentlemen.

11 (WHEREUPON THE COURT, ALL COUNSEL, THE  
12 DEFENDANT, AND THE COURT REPORTER WENT TO CHAMBERS  
13 OUT OF THE PRESENCE OF THE JURY PANEL FOR THE  
14 CHALLENGES FOR CAUSE AS FOLLOWS:)

15 BY THE COURT: Gentlemen here are mine. Here  
16 are mine for cause. Number 6, Lottie Poole. She did  
17 not believe in the death penalty under any  
18 circumstances.

19 BY MR. BILLY GILMORE: Judge, she did say she  
20 could give the death penalty; she was unsure.

21 BY THE COURT: She did on the first time, but  
22 she didn't on the second time. Number 10,  
23 Vanbuskirk; Carolyn Vanbuskirk knows the facts. She  
24 said she couldn't be fair and impartial. Ms. Poole--  
25 I mean Ms. Foote answered numerous questions that  
26 would disqualify her so-- she might be influenced by  
27 a relative and everything else.

28 BY MR. BILLY GILMORE: In other words, she  
29 didn't want to serve.

1           BY THE COURT: Ms. Hodges said she couldn't,  
2           number 20, said she couldn't. She didn't believe in  
3           the death penalty, and when I say that, for the  
4           record, "don't believe in the death penalty," I am  
5           couching that in the fact that they answered that  
6           they could not; they didn't believe in the death  
7           penalty regardless of what the instructions on the  
8           law were and the facts. All right, the same for  
9           number 21, Ms. Durham. The same for number 23, Ms.  
10          Townsend. Same for 26, Ms. Tiggs; same for 27, Ms.  
11          Patterson.

12          BY MR. BILLY GILMORE: Judge, you are running a  
13          little fast on me.

14          BY THE COURT: All right.

15          BY MR. BILLY GILMORE: What was the one after  
16          Townsend?

17          BY MR. HORAN: Tiggs, 26 and 27.

18          BY MR. BILLY GILMORE: Tiggs.

19          BY THE COURT: Are you caught up?

20          BY MR. BILLY GILMORE: (Counsel nods his head.)

21          BY MR. EVANS: My pen is wanting to go.

22          BY THE COURT: 27. Okay, 30, didn't believe in  
23          the death penalty. 33, didn't believe in the death  
24          penalty. Now 34, Ms. Carr's mother was murdered, and  
25          she said that would affect her. Number 35 didn't  
26          believe in the death penalty. Number 37 didn't  
27          believe in the death penalty. Mr. Barnett, I can't,  
28          I make a note by him, but I have got him for cause.

29          BY MR. HORAN: He is the one, I think, Your

1 Honor, that stood up later after you, I think during  
2 Mr. Evans' voir dire and said I can't vote for the  
3 death penalty after he vacillated initially.

4 BY THE COURT: All right, Ms. Pannell said she  
5 didn't, finally said she didn't believe in the death  
6 penalty, but she had several other questions that she  
7 didn't answer that would indicate that she couldn't  
8 be a fair and impartial juror. All right, Mr. Gentry  
9 on the sequestration question said he is a financial  
10 officer for some corporation, and he has to meet  
11 payrolls, and if he doesn't get to meet those  
12 payrolls or get to stay in contact with that company,  
13 that it would distract him to the point where he  
14 could not put his full attention to this case. So  
15 strike him for cause.

16 Number 49, Mr. Spencer believes that the  
17 indictment is evidence of guilt, and he would not  
18 change his mind.

19 BY MR. HORAN: You want to strike him for cause  
20 for that?

21 BY THE COURT: Just this once; if it ever comes  
22 up again, we will let him stay. Okay?

23 Ms. Ozburn, she was-- I had a couple of  
24 reasons. One of them was though that she might be,  
25 she said she might be swayed by Ms. Foote. But Ms.  
26 Foote is gone, but I believe--

27 BY MR. EVANS: She also had a death penalty  
28 problem.

29 BY THE COURT: Yeah, that's what I think, yeah.

1 53 is excused already.

2 BY MR. EVANS: What about 52?

3 BY THE COURT: I don't have a note by her.

4 BY MR. EVANS: Okay, I will come back to that  
5 one.

6 BY THE COURT: Okay. Ms. Richardson, she has  
7 got a police officer for a husband or a fiance', one  
8 or the other, and she said she could not be fair and  
9 impartial. Reba Floyd - I believe the death penalty  
10 on that one. Jimmy Jones said he couldn't be fair  
11 and impartial. His son is a highway patrol officer.  
12 Ms. Smallwood has children. She probably should have  
13 answered this question in qualification, but she has  
14 got children and no place to take care of them if  
15 this case were to go into next week, small children.  
16 She said she would be distracted by that, and I can't  
17 guarantee that this case won't go into next week, so  
18 I'm going to excuse her. That is 63. 71--

19 BY MR. HORAN: --Your Honor, we have Mr. Shack.

20 BY MR. EVANS: We can come back to those.

21 BY THE COURT: 71, Mr. Gray. He couldn't--  
22 death penalty.

23 BY MR. BILLY GILMORE: I think he said he had  
24 formed an opinion.

25 BY THE COURT: Okay, whatever. Mr. Dillard  
26 couldn't do the death penalty. Ms. Fells couldn't do  
27 the death penalty. Ms. Martin, there again I--

28 BY MR. EVANS: Heard from a cousin in Winona.

29 BY THE COURT: Right.

1 BY MR. BILLY GILMORE: And said she had formed  
2 an opinion.

3 BY THE COURT: Formed an opinion, okay. 79,  
4 Ruth Young; and 80, Ms. Russell, I believe both of  
5 those were against the death penalty. Number 81, Ms.  
6 Northington said she could not pass judgment on  
7 anybody. Ms. Baker, number 86, didn't believe in the  
8 death penalty.

9 BY MR. HORAN: Your Honor, for the record,  
10 number 84, I think that's-- she signed her card  
11 Melbrooks. It has got Middlebrooks.

12 BY MR. BILLY GILMORE: I think it is too.  
13 M E L B R O O K S is the way it's spelled on the  
14 card.

15 BY THE COURT: All right. Ms. Hale said she had  
16 had a family member charged with a crime which would  
17 prevent her from being fair and impartial in this  
18 case. Ms. Buchanan is the jailer here. She said she  
19 couldn't be fair and impartial. That is 89. Mr.  
20 Yant said he couldn't, he had somebody killed in his  
21 family, and it would affect him. William Jenkins, I  
22 did not-- I have got him marked for cause. That is a  
23 death penalty, I am sure.

24 BY MR. BILLY GILMORE: It is.

25 BY THE COURT: Yeah. Okay, have y'all got any?

26 BY MR. BILLY GILMORE: Judge, there is one added  
27 to the list; you may not have. Gary Dye.

28 BY THE COURT: That's right. He said he  
29 couldn't too, didn't he?

1 BY MR. EVANS: Yes, sir.

2 BY MR. HORAN: Diane McNeil also said--

3 BY MR. EVANS: --Yeah, I am going to go back  
4 through those. We have got several more that I have  
5 got for cause, Your Honor, starting with number 52,  
6 Ms. Dozier. She said that she could not consider the  
7 death penalty.

8 BY THE COURT: Okay.

9 BY MR. BILLY GILMORE: Is this for cause?

10 BY MR. EVANS: Right.

11 BY THE COURT: Number 64, Mark Shack said he did  
12 not believe in the death penalty.

13 BY THE COURT: These must have been answers to  
14 your questions?

15 BY MR. EVANS: They were.

16 BY THE COURT: Okay.

17 BY MR. EVANS: Number 70, Coker did not believe  
18 in the death penalty.

19 BY THE COURT: Let me go back. Do y'all agree  
20 with what he said so far on these, that that was  
21 correct? Not that you necessarily agree that they be  
22 excused for cause, but do you agree that that is what  
23 their testimony was?

24 BY MR. BILLY GILMORE: 70 was.

25 BY THE COURT: Okay.

26 BY MR. BILLY GILMORE: I don't know about my  
27 notes on the other two. What was the other two,  
28 Doug, you did?

29 BY MR. EVANS: 52 and 64.

1 BY MR. BILLY GILMORE: 52, that's correct. 64,  
2 correct.

3 BY THE COURT: Okay.

4 BY MR. EVANS: Number 94, McNeil also did not  
5 believe in the death penalty.

6 BY THE COURT: Y'all reflect that too?

7 BY MR. BILLY GILMORE: Yes, sir.

8 BY THE COURT: Okay. Does the Defense have any  
9 for cause?

10 BY MR. BILLY GILMORE: There is one I think you  
11 have already kicked off that we wanted for cause.  
12 Let's see.

13 BY MR. JOHN GILMORE: Number 54, he was the one  
14 that said he was a student. I kind of questioned  
15 that. I'm not sure if he understood.

16 BY THE COURT: He is the one said he was student  
17 and wanted to make sure that I got his lessons to  
18 him.

19 BY MR. JOHN GILMORE: Right.

20 BY THE COURT: And he said he was willing to  
21 serve. He was just concerned about the fact of  
22 whether he could be there-- I mean whether it would  
23 affect his grades, and after I assured him that we  
24 could get his information to him that he needed, he  
25 said it was okay, and that was even after he said  
26 well, he needed to talk to his professors and after I  
27 told him that he could not, but that his wife could  
28 be in contact with them and get that information to  
29 him, all of which I can do and will do in relation--

1 I will have to screen what kind of material that he  
2 gets, but the Court will do that in camera. If it's  
3 just related to his student activities, he can do  
4 that while he is sequestered.

5 BY MR. BILLY GILMORE: I believe he also said he  
6 was in law enforcement; he was in the marshal service  
7 sometime in the past.

8 BY THE COURT: I don't know. I don't remember  
9 that. Anyhow, I didn't find anything that said he  
10 was, couldn't be, that would keep him from being fair  
11 and impartial. Okay.

12 BY MR. HORAN: Run down it real quick and make  
13 sure we have got them all.

14 BY MR. BILLY GILMORE: Judge, just a minute. We  
15 are not quite through going down this list.

16 (Pause while Defense Counsel confers.)

17 BY MR. JOHN GILMORE: Your Honor, just for the  
18 record, number 12, Sue Abernathy, I am sure she  
19 probably contacted you also from the Executive Inn.  
20 When, a couple of days after it was a change of  
21 venue, I received a letter from her in her official  
22 capacity.

23 BY THE COURT: She is the director of the  
24 Executive Inn?

25 BY MR. JOHN GILMORE: Right, and I just wanted  
26 to make that on the record that she was, had  
27 contacted my office. I'm not sure about y'all's  
28 office.

29 BY MR. BILLY GILMORE: She has made no



1 indication that, you know, she did this.

2 BY THE COURT: She is not offended that none of  
3 us stayed there apparently, I guess. I will leave  
4 that up to y'all to figure out.

5 BY MR. EVANS: It's a toss up.

6 BY MR. HORAN: Is that it?

7 BY MR. BILLY GILMORE: That is all.

8 BY MR. HORAN: It is 3:30 now.

9 BY THE COURT: The sooner, the better, boys, but  
10 go at it.

11 BY MR. EVANS: Yes, sir.

12 BY MR. BILLY GILMORE: Do you think we are going  
13 to get any testimony this afternoon?

14 BY THE COURT: Well, I don't know. We ain't  
15 going to stop at 4 o'clock.

16 (FOLLOWING A RECESS FOR COUNSEL TO CONFER, THE  
17 COURT, THE DEFENDANT, AND ALL COUNSEL WITH THE  
18 EXCEPTION OF MR. HORAN AGAIN CONVENED IN CHAMBERS OUT  
19 OF THE PRESENCE OF THE JURY PANEL FOR THE SELECTION  
20 OF THE JURY AS FOLLOWS:)

21 BY THE COURT: Tender me twelve.

22 BY MR. EVANS: The State will tender juror  
23 number 1. Number two will be S-1. Number 3 will be  
24 S-2. Tender number 4; tender number 5. 7 will be  
25 S-3. Tender 8; tender 9; tender 11; tender 12;  
26 tender 13; tender 14. 15 will be S-4.

27 BY MR. BILLY GILMORE: 15 is S-4.

28 BY MR. EVANS: Tender 17; tender 18. 19 will be  
29 S-5.

1 (Mr. Horan enters chambers.)

2 BY MR. EVANS: 22 will be S-6. Tender 24.

3 BY THE COURT: Okay. Is that twelve? Let me  
4 count. Yeah, that is twelve. Okay, what do you say  
5 to 1?

6 BY MR. BILLY GILMORE: That will be D-1.

7 BY THE COURT: Number 4?

8 BY MR. BILLY GILMORE: We will accept 4.

9 BY THE COURT: How about 5?

10 BY MR. BILLY GILMORE: We will accept 5.

11 BY THE COURT: 8?

12 BY MR. BILLY GILMORE: We will accept 8.

13 BY THE COURT: 9?

14 BY MR. BILLY GILMORE: We will accept 9.

15 BY THE COURT: 11?

16 BY MR. BILLY GILMORE: We will accept 11.

17 BY THE COURT: 12?

18 BY MR. BILLY GILMORE: Accept 12.

19 BY THE COURT: 13?

20 BY MR. BILLY GILMORE: Accept 13.

21 BY THE COURT: 14?

22 BY MR. BILLY GILMORE: Be S-- I mean D-2.

23 BY MR. EVANS: Yeah, don't use mine.

24 BY THE COURT: He wears both hats sometimes.

25 BY MR. BILLY GILMORE: I have worn the State hat  
26 on a jury for a long time.

27 BY THE COURT: 17?

28 BY MR. BILLY GILMORE: 17, we will accept.

29 BY THE COURT: 18?

1 BY MR. BILLY GILMORE: We will accept.

2 BY THE COURT: 24?

3 BY MR. BILLY GILMORE: 24, we will accept. Wait  
4 a minute; wait just a minute. Did you lose  
5 something? Just a minute, Judge. My counter is  
6 catching up. Let us double count here and see what  
7 we have got left. (Pause).

8 BY THE COURT: What do y'all say to 24?

9 BY MR. BILLY GILMORE: We will accept him.

10 BY THE COURT: Okay. I need two, I think.  
11 Yeah.

12 BY MR. EVANS: Y'all did take 24?

13 BY THE COURT: Uh-hum.

14 BY MR. EVANS: The State will tender 25.

15 BY MR. BILLY GILMORE: Wait a minute. Is that--  
16 yeah.

17 BY MR. EVANS: That's all of them.

18 BY MR. GILMORE: Okay, I'm sorry. My counter  
19 didn't tell me.

20 BY MR. EVANS: 28 will be S-7.

21 BY MR. BILLY GILMORE: 28 is S-7.

22 BY MR. EVANS: 29 will be S-8. Tender 31.

23 BY MR. JOHN GILMORE: All right, did you tender  
24 25?

25 BY MR. EVANS: Right. 25 and 31.

26 BY THE COURT: 25 and 31 are tendered to you.

27 (Long Pause) All right, what do y'all think of 25?

28 BY MR. BILLY GILMORE: We will make that D-3.

29 BY THE COURT: How about 31?

1 BY MR. BILLY GILMORE: 31, D-4.

2 BY THE COURT: All right, tender me two more,  
3 State.

4 BY MR. EVANS: Tender 32 and tender 36.

5 BY MR. BILLY GILMORE: Okay, that will be, 32  
6 will be D-5. 36 will be D-6.

7 BY MR. EVANS: All right, give me one second,  
8 Judge. The State will tender 38 and tender 42.

9 BY MR. BILLY GILMORE: 38 will be D-7. 42 is  
10 going to be D-8.

11 BY MR. EVANS: One second, Your Honor. Tender  
12 43. 44--

13 BY MR. HORAN: S-7.

14 BY MR. EVANS: S-9.

15 BY THE COURT: S-9.

16 BY MR. HORAN: 9; I'm sorry.

17 BY MR. EVANS: 44 will be S-9.

18 BY MR. BILLY GILMORE: You took S-9 as 44?

19 BY MR. EVANS: And tender 45. No, I took 43 and  
20 45 and struck 44.

21 BY MR. BILLY GILMORE: Okay. I got you. 58  
22 will be D-9. These ages are messing me up.

23 BY THE COURT: 43.

24 BY MR. BILLY GILMORE: 43 will be D-9. 45 will  
25 be D-10.

26 BY THE COURT: Y'all did okay until you got to  
27 these last two.

28 BY MR. EVANS: 46 will be S-10. Tender 47 and  
29 tender 48.

1 BY MR. BILLY GILMORE: 47 will be D-11. I will  
2 take 48; I'm sorry.

3 BY THE COURT: Take 48?

4 BY MR. BILLY GILMORE: Yes.

5 BY THE COURT: All right, need one more.

6 BY MR. EVANS: 50 will be S-11. We will tender  
7 54.

8 BY THE COURT: What do y'all say to 54?

9 BY MR. BILLY GILMORE: 54, we will take.

10 BY THE COURT: All right, that is twelve, I  
11 think. (Court recounts.) Okay, that is twelve.  
12 Okay, what does the State say-- I'm going to pick, I  
13 know I'm going to take two. Do y'all see any  
14 necessity of having more than two alternates?

15 BY MR. EVANS: I lost track of the ones that  
16 there were problems. Did we end up with any of those  
17 on the jury?

18 BY THE COURT: One of them was, the first one  
19 was Ms. Jones. She is gone. And the other one, I  
20 think, was maybe Ms. Smallwood in which case she is  
21 gone too.

22 BY MR. HORAN: There is a guy on there said  
23 something about his plant, the guy that worked at the  
24 factory. What was his name?

25 BY MR. EVANS: I don't remember.

26 BY MR. HORAN: He said it may be a problem if he  
27 couldn't--

28 BY THE COURT: There were two women are the only  
29 ones I had any concern about. One of them is gone.

1 BY MR. JOHN GILMORE: She had a family member or  
2 something?

3 BY MR. EVANS: We will tender 57 as the first  
4 alternate.

5 BY MR. BILLY GILMORE: Are we going to do two  
6 you said?

7 BY THE COURT: Y'all think that's enough? I do.

8 BY MR. BILLY GILMORE: I think that is enough.

9 BY THE COURT: Okay. 57 is tendered as the  
10 first alternate.

11 BY MR. BILLY GILMORE: We will use him as an  
12 alternate challenge.

13 BY THE COURT: What?

14 BY MR. HORAN: Challenge to him.

15 BY MR. BILLY GILMORE: Challenge.

16 BY THE COURT: Okay, that is D-A1.

17 BY MR. EVANS: All right, we will take Rousseau  
18 as the first alternate then.

19 BY THE COURT: Okay, he is the first alternate,  
20 and he is on the jury-- I mean he is alternate on the  
21 jury. What do you say to, what does the State say to  
22 59?

23 BY MR. EVANS: We will tender 59 as the second  
24 alternate.

25 BY MR. BILLY GILMORE: We get two challenges on  
26 the--

27 BY THE COURT: You get a challenge per  
28 alternate.

29 BY MR. BILLY GILMORE: Per alternate. And you

1 tendered who, Rousseau?

2 BY THE COURT: Rousseau is on. He is tendering  
3 59.

4 BY MR. BILLY GILMORE: All right, 59. We will  
5 accept 59 as the second alternate.

6 BY THE COURT: All right, Alexander?

7 BY MR. BILLY GILMORE: Yes, sir.

8 BY THE COURT: All right. Now let me go over  
9 this with y'all. Number 4, number 5, number 8,  
10 number 9, number 11, number 12, number 13, number 17,  
11 number 18, number 24, number 48, number 54, and 58  
12 and 59 are the alternates. Is that what y'all have  
13 got? Is that what you have got, Linda?

14 BY THE COURT REPORTER: Yes, sir.

15 BY THE COURT: All right. How much time y'all  
16 want on opening statements?

17 BY MR. BILLY GILMORE: Judge, one thing we need  
18 to bring up at that this point. We want to object on  
19 the Batson rule at this point.

20 BY MR. EVANS: At this point?

21 BY MR. BILLY GILMORE: From what I can see, I  
22 believe the State has excluded all members of the  
23 minority race, and the Defendant is a member of the  
24 minority race, from this panel.

25 BY THE COURT: Of course, that is not --you have  
26 got to-- that is not necessarily indicative of it.  
27 Do you have anything else other than that?

28 BY MR. BILLY GILMORE: Your Honor, I believe if  
29 we raise the objection, they have to show cause why

1           they excluded them.

2           **BY THE COURT:** No, sir. You can't do it by  
3           objection. You have to-- the law is that you have to  
4           show a prima facie case of discrimination by race,  
5           and then if I find that you have met that burden,  
6           then they can put race neutral stuff in. They are  
7           required then to put race neutral in. That's what  
8           the law is.

9           **BY MR. BILLY GILMORE:** Yes, sir.

10          **BY THE COURT:** Let the record reflect that the  
11          Court's records indicate that there were, out of 97  
12          on the panel, 22 were black and 75 were white. I  
13          think that is right.

14          **BY MR. HORAN:** How many whites did we strike?

15          **BY THE COURT:** I can tell you that real quick.  
16          (Court counts.)

17          **BY MR. EVANS:** Six.

18          **BY THE COURT:** Maybe I missed something. I  
19          found five.

20          **BY MR. BILLY GILMORE:** It looks like they  
21          excluded five of--

22          **BY THE COURT:** --Well, I think it is six. I  
23          miscounted.

24          **BY MR. EVANS:** Five out of eleven, I think, were  
25          black.

26          **BY THE COURT:** Yeah. Six were white; is that  
27          right? Let the record reflect six were peremptorily  
28          excused by the State, six of the eleven -- the State  
29          used eleven peremptory challenges. Six of them were



1 for white jurors and five for black jurors.

2 BY MR. BILLY GILMORE: Your Honor, would the  
3 record also reflect that the five blacks were the  
4 only blacks that were available in this part of the  
5 jury listing because the other blacks had been  
6 excluded by cause previously.

7 BY THE COURT: Okay. Anything else?

8 BY MR. JOHN GILMORE: And also none of the  
9 blacks that were excluded by the State's peremptory  
10 challenges showed any cause in the questioning in the  
11 voir dire that would lead to any reason for them to  
12 be struck other than race.

13 BY THE COURT: Okay, the Court does not find  
14 that there is any prima facie showing of racial bias  
15 in picking the jury. However, since this case may or  
16 may not go up, does the State want to go ahead and  
17 put race neutral reasons in?

18 BY MR. EVANS: Yes, Your Honor. Hold on just  
19 one second before we do.

20 (State's Counsel confer briefly.)

21 BY MR. EVANS: Your Honor for the record, we  
22 would object that they have not proven any racial  
23 reasons to invoke Batson, but the State is prepared  
24 with the Court order to go through with our reasoning  
25 and we--

26 BY THE COURT: Let me say this for the record.  
27 The only, the only element that they raised in  
28 relation to race was the numerical order. Outside of  
29 that, they raised the question that the State

1 excluded all of the blacks that were available within  
2 the number that we picked the panel. That is a  
3 correct statement, but the Court finds that that was  
4 the only thing that was raised and found that that  
5 does not create a prima facie case in light of the  
6 other picks by the--

7 BY MR. HORAN: --Do you want us to give reasons  
8 for the whites or just the blacks?

9 BY THE COURT: Why don't you just put it all in  
10 the record. That's what I would do.

11 BY MR. EVANS: All right, S-1 was our first  
12 strike. That was a white juror. That particular one  
13 was undecided and was leaning against the death  
14 penalty. S-2 was juror number--

15 BY THE COURT: --Let me, I will make a statement  
16 after each one of these--

17 BY MR. EVANS: --okay--

18 BY THE COURT: --if I can, and I think that is  
19 correct. Ms. Holley was, she could have possibly  
20 been excluded for cause, and I find that that was a  
21 legitimate strike.

22 BY MR. EVANS: Strike S-2 was a black juror, Ms.  
23 Locus. We have several reasons for her. One is that  
24 she has three children, no husband to help take care  
25 of them. We are afraid that that will influence her  
26 ability to sit and be fair and impartial and not try  
27 to rush through this trial. Another reason is that  
28 she was late on turning her questionnaire in, and on  
29 religious beliefs and several other questions she did

1 not put any answers at all.

2 BY MR. HORAN: She put "no" on religious  
3 beliefs.

4 BY MR. EVANS: Yeah, put "no" on religious  
5 beliefs.

6 BY THE COURT: Okay. If it were at issue, I  
7 would find that that is a race neutral reason.

8 BY MR. EVANS: Strike S-3 is juror number 7,  
9 Linda Enfinger, which was a white juror. In that  
10 particular case she said she has a son that has been  
11 taken to Youth Court. We did a little further  
12 checking and found out that it is a Youth Court  
13 matter, but it was a pretty serious matter. I think  
14 it was a sexual battery.

15 BY THE COURT: Okay. I find that that is within  
16 the realm of peremptory challenges.

17 BY MR. EVANS: S-4 is juror number 15--

18 BY THE COURT: When I say this, I am couching  
19 this on the fact, I'm not ruling. I am saying what I  
20 would have done if it was presented.

21 BY MR. EVANS: Yes, sir. Juror number 15, Bobby  
22 Joe Williams is a black male. We are striking him  
23 because of the fact that in his questionnaire he  
24 stated he had been arrested, but he forgot what he  
25 was arrested for. And we feel that that fact that he  
26 has been arrested especially with the fact that he  
27 forgot what he was arrested for might tend to make  
28 him lean in favor of the Defendant.

29 BY THE COURT: That also would be a race neutral

1 reason.

2 BY MR. EVANS: S-5 is juror number 19, Jimmy  
3 Wayne Cummings, who is a black male. He has been  
4 arrested before which would tend to possibly make him  
5 lean in favor of the Defendant. Plus he lives in an  
6 area known as Haven Acres which according to the  
7 Sheriff's Department and Police Department is one of  
8 the worst areas of this community where they have all  
9 types of violence and drug dealers.

10 BY THE COURT: That would also be a race neutral  
11 reason.

12 BY MR. EVANS: Juror number 22 is strike S-6.  
13 He is a white male. We are striking him as we did  
14 some of the others because he has relatives that have  
15 been arrested. Plus he voted not guilty on a  
16 previous trial according to his questionnaire.

17 BY THE COURT: Okay.

18 BY MR. EVANS: S-7 is juror number 28, Mamie  
19 Cayson. That is a black female. She has family  
20 members that have been charged with drug charges, and  
21 that is according to her questionnaire.

22 BY THE COURT: Okay, that would be a race  
23 neutral reason.

24 BY MR. EVANS: S-8 is juror number 29, Tracey  
25 Edwina Smith. She is a white female. She has a  
26 brother-in-law that has been charged with a felony.

27 BY THE COURT: Okay.

28 BY MR. EVANS: S-9 is juror number 44. That is  
29 a white male, Gregory Allen Hayse. He has been

1           arrested for public drunk which might tend to make  
2           him lean in favor of the Defendant.

3           **BY THE COURT:** He was arrested for what?

4           BY MR. EVANS: Public drunk, and he is a white  
5           male. S-10 is juror number 46, Shelia Smith. That  
6           is a black female. She is a case worker for a  
7           halfway house, and after discussing the case with the  
8           Sheriff's Department, they know her and do not feel  
9           that she would make a good juror. She is extremely  
10          liberal working in the halfway house and tends to  
11          work very closely with inmates and tends to feel  
12          sorry for inmates.

13          **BY THE COURT:** Okay. I find that that would be  
14          race neutral.

15          BY MR. EVANS: S-11 is juror number 50, Beverly  
16          Smith. That is a white female. She has an uncle  
17          that was charged with rape.

18          BY MR. HORAN: I think it's Beverly Smith Bailey  
19          now. On her questionnaire she filled it out as  
20          Bailey.

21          **BY THE COURT:** Well, as stated, the Court finds  
22          there is no basis for the Batson challenge, and it's  
23          overruled. Okay, now it's 10 until 5:00. How long  
24          are you going to want on opening statement?

25          BY MR. EVANS: Judge, I would say possibly 30  
26          minutes. It's going to take a little while to go  
27          through and explain to them what we intend to prove  
28          in this case.

29          **BY THE COURT:** Okay. We are going to do opening

1 statements today because I want to start the  
2 testimony in the morning at 9 o'clock. If y'all both  
3 take 30 minutes, we will get through about 6:00,  
4 maybe a little bit before, and that's not too late.  
5 We won't do that, we won't necessarily go to 6:00  
6 every day, but it's important that we start the  
7 testimony in the morning. And so we are going to do  
8 the opening statements.

9 BY MR. EVANS: And it may not take--

10 BY MR. HORAN: --Before we get separated,  
11 everybody here at 9:00, or are we going to meet  
12 before 9:00? Do y'all have any motions before we get  
13 started? Anything else?

14 BY THE COURT: Let's talk about that when we get  
15 through.

16 BY MR. HORAN: All right. I just wanted before  
17 we got separated.

18 BY THE COURT: We are not going to get  
19 separated. We will be joined at the hip for a week.

20 BY MR. EVANS: It may not take the full thirty,  
21 but we would like to know we have that.

22 BY THE COURT: That would be appreciated by me  
23 and the jury.

24 BY MR. EVANS: And, Judge, to make sure I  
25 understand the Court's ruling, since opening is not  
26 evidence, there is no problem with me explaining to  
27 them that there were four deaths, but they are only  
28 going to be trying the one case in this one.

29 BY THE COURT: I'm going to have to instruct

1           them along those lines anyhow, so I have got no  
2           problem. Just don't dwell on it; okay.

3           BY MR. EVANS: Yes, sir.

4           BY MR. BILLY GILMORE: Are you talking about the  
5           end you are going to do that?

6           BY THE COURT: I'm going to instruct them-- when  
7           the evidence, when they get to the point where there  
8           is going to be some evidence of the other crimes,  
9           they are supposedly going to let me know that that is  
10          coming, and then we will have a hearing on that to  
11          begin with. And then after I rule and, you know, if  
12          I rule that they can let it in, then I'm going to  
13          give a limiting instruction to the jury at that  
14          time. Then at the end we are going to also give  
15          another instruction that they can't do that.

16          BY MR. EVANS: And that will probably be with  
17          our first witness tomorrow, so it'll come on pretty  
18          quick.

19          BY THE COURT: Okay.

20          BY MR. BILLY GILMORE: Who is your first  
21          witness?

22          BY MR. EVANS: I'm not sure; we are down to a  
23          couple.

24          BY THE COURT: All right, let's go get this  
25          done.

26                 (THE COURT, ALL COUNSEL, THE DEFENDANT, AND THE  
27                 COURT REPORTER RETURNED TO OPEN COURT WHERE THERE WAS  
28                 THE FOLLOWING:)

29          BY THE COURT: Ladies and gentlemen, there will

1 be, as I told you earlier, there is going to be  
2 twelve of you as jurors in this case, and there will  
3 be two alternates. I'm going to call your names and  
4 ask you to come around and be seated in the jury  
5 box. Number 4, Sharon Miller; number 5, David Beard;  
6 number 8, Ray Whitehead; number 9, Carl Jackson, Carl  
7 David Jackson; number 11, Bruce Allen Owen; number  
8 12, Sue Abernathy; number 13, Ms. Charles- Edith  
9 Fikes; number 17, Tony Box; number 18, James Carl  
10 Repult, Jr; number 24, Mrs. Thomas Williams; number  
11 48, William Thomas Roberts; number 54, William Bryan  
12 Green. The alternates are Charles Edward Rousseau  
13 and Brenda Alexander.

14 It's kind of like the lottery, isn't it?  
15 (Laughter) Yes, sir. (To alternate) You come around  
16 up here.

17 Okay. I lost one one time, so let me go over it  
18 again and make sure I have got everybody. Ms.  
19 Miller, Mr. Beard, Mr. Whitehead, Mr. Jackson, Mr.  
20 Owen, Ms. Abernathy, Ms. Fikes, Mr. Box, Mr. Repult,  
21 Ms. Williams, Mr. Roberts, Mr. Green, and Mr.  
22 Rousseau and Ms. Alexander. Okay.

23 Ladies and gentlemen, those of you who have not  
24 been selected, of course, this completes your service  
25 for this case. I do appreciate very much your being  
26 here. You can see by the questions that it was  
27 necessary to have all of you here to do this. You  
28 have performed a valuable service for your community  
29 and this state. It has been my pleasure to be here



1 with you today. With those statements though, you  
2 are free to go.

3 (Rest of jury panel leaves the courtroom.)

4 **BY THE COURT:** I'm going to give y'all an oath  
5 in just a minute. It's 5 o'clock, and I'm not going  
6 to necessarily stay late every day. It depends on  
7 how the case goes. But today we are going to-- each  
8 side is entitled to an opening statement which is  
9 just an outline of what they intend to prove. It's  
10 absolutely not evidence at all, and you are not to  
11 consider it evidence. Do each of you understand  
12 that? (Jurors nods their heads.)

13 Okay, this will just kind of help you tell you  
14 where we are going. We can do that this afternoon,  
15 and then in the morning at 9 o'clock we can get  
16 started on the proof in this case. So I'm going to  
17 stay a little late to get those preliminaries out of  
18 the way today.

19 If y'all will stand and raise your right hand,  
20 I'm going to give you the oath in this case.

21 Do you and each of you solemnly swear, or  
22 affirm, that you will well and truly try the issue  
23 between the State of Mississippi and Curtis Flowers  
24 and a true verdict give according to the evidence and  
25 the law so help you God?

26 **BY ALL JURORS:** I do.

27 **BY THE COURT:** All right. Have we got the  
28 bailiffs here? (To jury) You can have a seat.

29 (Courtroom bailiff went out to see if the other

1                   bailiffs were here.)

2                   **BY THE COURT:** We can do the bailiffs in a  
3                   minute. Y'all don't let me forget to do the oath on  
4                   the bailiffs. Okay, is the State ready?

5                   **BY MR. EVANS:** Ready for opening statement?

6                   **BY THE COURT:** Yes, sir.

7                   **BY MR. EVANS:** (Whispering) Judge, I think there  
8                   are some witnesses in here.

9                   **BY THE COURT:** I'm sorry. All the witnesses  
10                  that are in here for this case, if you are a witness,  
11                  you are going to have to go outside during this, at  
12                  this point in time.

13                  **BY THE COURTROOM BAILIFF:** They are not here  
14                  yet, Judge.

15                  **BY THE COURT:** That's okay; we will do it when  
16                  they get here. The rule will be invoked in this  
17                  case, and that means that all witnesses in this case  
18                  cannot be present in the courtroom while the other  
19                  witnesses are testifying unless they have been  
20                  finally excused. If you are a witness, you need to  
21                  go outside the courtroom. Mr. Evans, you will know  
22                  who those are, and I don't.

23                  **BY MR. EVANS:** Yes, sir. I don't see anybody  
24                  that is going to be called in this case at this  
25                  point, Your Honor, unless there is somebody that  
26                  knows they have been subpoenaed.

27                  **BY THE COURT:** How about the Defense?

28                  **BY MR. JOHN GILMORE:** They are going out now,  
29                  Your Honor.

1                   BY THE COURT: For the record, I do invoke the  
2 rule in this case.

3                   (Several people leave the courtroom. Counsel  
4 confer out of the hearing of the reporter.)

5                   BY MR. EVANS: May I proceed, Your Honor?

6                   BY THE COURT: Well, let me make sure all the  
7 witnesses are out.

8                   BY MR. BILLY GILMORE: We will exclude her for  
9 the time being, Your Honor. We may or may not use  
10 her, but to be safe, we will exclude her right now.

11                   (Another lady leaves the courtroom.)

12                   BY MR. EVANS: Thank you, Your Honor.

13                   OPENING STATEMENT BY MR. EVANS:

14                   Ladies and gentlemen, this part, the opening  
15 statement is not proof. What I tell you and what the Defense  
16 attorneys tell you is not evidence that you can use. It's more  
17 like a road map to kind of give you an idea of what is coming,  
18 and what I'm going to try to do in as short a period of time as  
19 I can is explain to you what we expect to prove during the next  
20 week.

21                   To start with, we are going to show you that this  
22 Defendant, Curtis Flowers, was an employee of Tardy Furniture  
23 for a matter of a few days. Prior to July the 4th of '96, he  
24 was terminated. We are going to show you that he was  
25 delivering some batteries for Tardy's and that he dumped them  
26 off the back of the truck, and because of that, he was  
27 terminated from employment. We will show you that he had a  
28 paycheck coming that was withheld because of the damages that  
29 he did to those batteries.

1           From there we will show you that on the day that this  
2 crime was committed on July the 16th, 1996, there were four  
3 people working at Tardy Furniture in Winona. Ms. Bertha Tardy  
4 was there running the store as she always did. Carmen Rigby  
5 was there as the bookkeeper. Robert Golden had just started  
6 working that day. That was his very first day on the job, and  
7 Derrick "BoBo" Stewart was in his second day. We will show you  
8 that he was a high school student that was just working a  
9 summer job, and this was his second day to be at work.

10           We will show you that when Sam Jones came in to help  
11 these young boys, show them how to deliver furniture, that he  
12 found all four people were laying in the floor shot, laying in  
13 pools of blood. We will show that when he got in there and saw  
14 that, he ran up the street to Garrett-- I mean to Coast to  
15 Coast and had the police department called.

16           We will show you that when the Police Chief arrived  
17 at the scene, he determined that everybody there was dead  
18 except for Derrick Stewart, and he called for an ambulance to  
19 come pick up Derrick Stewart. We will show you that Derrick  
20 lived for a while, for days before he finally died from a  
21 gunshot wound to the head. We will show that the other three  
22 people that were killed there, Ms. Tardy, Ms. Rigby and Mr.  
23 Golden, were all killed from gunshot wounds to the head.

24           From there we will attempt to show you why the  
25 Defendant in this case was charged. As I told you, we are  
26 going to show that he had a motive because of being fired from  
27 the store and his check held. We will further show you that  
28 there was a robbery committed during the time of the killings,  
29 that the money that is always in the cash register to open up

1 was taken.

2 From that point we are going to be able to show you  
3 that at approximately the same time, maybe an hour after these  
4 crimes were committed, that a person by the name of Doyle  
5 Simpson, who is I believe the uncle of the Defendant, reported  
6 that his .380 automatic pistol was stolen out of his car at  
7 Angelica, which is a factory there in Winona. We will show you  
8 that Curtis Flowers, the Defendant, knew that that .380  
9 automatic was in the car. We will also show you by eye witness  
10 testimony that he was seen standing beside the car  
11 approximately the time the gun was taken out of it.

12 We are going to be able to show you that that gun  
13 was, in fact, the murder weapon even though we don't have the  
14 gun. The way we are going to show that to you is that Doyle  
15 Simpson, the owner of the gun, carried the officers to where he  
16 had shot the gun sometime before this. They dug bullets out of  
17 a post where he had target practiced the gun, and we will show  
18 you by expert testimony from the State Crime Lab, Steve Byrd,  
19 that he positively matched the projectiles that Doyle had test  
20 fired into that post with one of the bullets that was recovered  
21 from the crime scene. So we will be able to show you  
22 definitely that that is the murder weapon.

23 We will further show you that a bloody tennis shoe  
24 track was recovered inside the store. That tennis shoe track,  
25 we are going to show by expert testimony was made by a Fila  
26 Grant Hill, size ten and a half shoe. The Defendant at  
27 different points stated that he had no shoes other than the  
28 ones that he had given to the officers and denied owning any  
29 Fila Grant Hill shoes. We have numerous witnesses that we will

1 put on or can put on to show that he did, in fact, own Fila  
2 Grant Hill tennis shoes, and we have the tennis shoe box that  
3 was recovered from where he was living that was a Fila Grant  
4 Hill, size ten and a half shoe box.

5 The Defendant was picked up approximately four hours  
6 after these killings. He was brought to the police station for  
7 questioning. We will show you that while he was there for  
8 questioning, a gunshot residue test was used on his right hand  
9 to see if he had fired a gun that day. And an expert with the  
10 State Crime Lab, Joe Andrews, will testify that that test was  
11 positive, that he had fired a gun that morning.

12 We will further show you that when he was  
13 interviewed, he denied being on the east side of Highway 51  
14 that morning. The testimony will show that he lived on the  
15 west side of 51, and the downtown area is on the east side.  
16 Also, Angelica where the gun was taken is on the east side of  
17 51. We will show you by numerous witnesses that he, we will be  
18 able to show you the path that he took going to Angelica by a  
19 witness. We will be able to show you by a witness that he was  
20 standing by the gun-- by the car the gun was taken out of. We  
21 will be able to show you by other witnesses the path that he  
22 took coming back from Angelica.

23 We will also have a witness that will be able to put  
24 him in front of the store at approximately the time the  
25 killings took place, and we have another witness that will put  
26 him running away from the store at approximately right after  
27 the crimes occurred.

28 Also, we will have two people that were in jail that  
29 the Defendant admitted to that he committed these two crimes.

1 This will basically be the proof that we will show you during  
2 this week's trial that links the Defendant to this case.

3 Thank you, Your Honor.

4 OPENING STATEMENT BY MR. BILLY GILMORE:

5 Ladies and gentlemen, I know it's getting late, and I  
6 am tired and you are tired. I will be brief. I am just going  
7 to more or less respond to what the District Attorney has told  
8 you. I told you when we were voir diring the jury this was a  
9 circumstantial case. In other words, they don't have a gun.  
10 They don't have a witness with a smoking gun saying the  
11 Defendant had it in his hand.

12 Just to go over a few things, he mentioned the fact  
13 of the batteries being dropped out of the back of the truck. I  
14 think the proof will show that this happened a day or two  
15 before the 4th, the 4th of July, and that when the Defendant  
16 left on the 3rd of July, Ms. Tardy advanced him money. Also, I  
17 think you will find out that the check was issued for the full  
18 amount. There was no deductions for the batteries.

19 The Defendant did not go back after the 4th of July  
20 holiday. He called in on Friday. He had family members there  
21 for a holiday. He didn't go in on Saturday. He didn't go in  
22 on Monday. He called in on Tuesday and was told that since he  
23 had not shown for work, they couldn't use him any more. I  
24 think the proof will show that he had applied for another job  
25 and thought he had another job, the reason he didn't go back to  
26 that job.

27 Now we agree with Mr. Evans that this was a gruesome  
28 crime, but we are here to determine if this Defendant did this  
29 crime. Remember we talked about the presumption of innocence.



1     Until--

2                   BY MR. EVANS:  --Your Honor, this is not  
3                   argument.  This is basically for each side to tell  
4                   what their side is going to prove.

5                   BY THE COURT:  That's true, Mr. Gilmore.  Let's  
6                   keep it to that.

7     BY MR. BILLY GILMORE:

8                   They, Mr. Evans talked about why the Defendant was  
9                   charged, and he went over a few things, but he didn't tell you  
10                  that the Defendant wasn't charged -- this happened on July the  
11                  16th, 1996.  He wasn't charged with this crime until January of  
12                  1997.  He didn't tell you that.

13                  Then he also tells you about Doyle Simpson's gun  
14                  missing out of his vehicle.  I don't believe he can show you by  
15                  what he just said--

16                  BY MR. EVANS:  --Your Honor, again I'm going to  
17                  have to object.  This is basically-- well, this is  
18                  only an opening statement.  I haven't heard one  
19                  evidence of what he intends to prove yet.  That is  
20                  the purpose of the opening statement.

21                  BY MR. BILLY GILMORE:  All right.

22                  BY THE COURT:  That is true.  Now both of y'all  
23                  have been doing this long enough for both of you to  
24                  understand it.  And Mr. Gilmore, that is what an  
25                  opening statement is, and I have already told the  
26                  jury that.  You need to stick to what you are going  
27                  to show or disprove.

28     BY MR. BILLY GILMORE:

29                  The proof will show that the gun was not discovered



1 missing until somewhere around 10:30 that morning. And as far  
2 as the ballistics on the bullets, they were able to recover, I  
3 think, one bullet at the scene, and they went out and recovered  
4 some bullets where there had been some target practicing. But  
5 I think the proof will show that there had been other guns  
6 fired in that area, and I think the proof will also show that  
7 there is a possibility of two guns involved.

8 And as far as the track inside the store made by a  
9 Fila, Fila tennis shoe, and these things have serial numbers on  
10 them. They are made in China, and I think the proof will show  
11 that the Defendant did not wear that brand shoe. And in  
12 reference to the tennis shoe box found in the house, I think  
13 the proof will show that the Defendant's girlfriend had bought  
14 her son a pair of those shoes.

15 The basic, I think the State is going to try to show  
16 you, and we are going to probably show the inconsistency. They  
17 are trying to place him walking all over town, and I want you  
18 to listen to this when we get into the testimony. They are  
19 going to have him walking, and most of you know the size of  
20 Winona. He is going to be walking over a large section of  
21 Winona, and put your time frame on it. Also, there is going to  
22 be various testimony as to the clothing he was wearing. I want  
23 you to listen to that real close. You are going to find out  
24 different witnesses are going to testify he had on different  
25 clothes at different times, and this was all within a period of  
26 an hour or so.

27 I want you to look at the inconsistencies in the  
28 witnesses throughout the whole trial. This is strictly a  
29 circumstantial case, so I want you to listen to that. The

1 witness in front of the store, I think you will have a witness  
2 to show that a car that looked like, similar to or may have  
3 been Doyle Simpson's car was parked in front of the store.  
4 This is the guy the gun was stolen from, allegedly stolen  
5 from. And I think you will also hear from Doyle Simpson  
6 himself. When he was first interviewed, he lied through his  
7 teeth about the whole situation.

8 All I ask, listen to the testimony. And if the Court  
9 doesn't have any objection, I would like to furnish the jury  
10 with a pad where they can keep notes on it and pens.

11 BY THE COURT: No, sir. We are not going to do  
12 that right now.

13 BY MR. BILLY GILMORE: I'm talking about  
14 tomorrow.

15 BY THE COURT: Well, we will talk about it.

16 BY MR. BILLY GILMORE: All right, sir.

17 But like I say, I want you to listen to all the  
18 testimony, and I think after you have sat there, you can hear  
19 these inconsistencies throughout the whole State's case. Just  
20 listen to it, and I think you will understand that they don't  
21 have a case to prove to you beyond a reasonable doubt of this  
22 Defendant's guilt.

23 Thank you.

24 BY THE COURT: Ladies and gentlemen, Mr. Evans  
25 may have covered this, but I want to make sure y'all  
26 understand this. This is the trial of State versus  
27 Curtis Flowers in relation to the death of Ms.  
28 Tardy. There may be some evidence of some other  
29 things that went on there that day, but you are not

1 to consider those in any way as to whether or not  
2 this man is guilty of the crime that we are trying.  
3 We are trying this case, and do each of you  
4 understand that? That you cannot consider those  
5 other things as to whether or not he did this?

6 Okay. All right. We are going to quit for  
7 today. We will start in the morning at 9 o'clock.  
8 Ms. Loftin has told me that you get your choice. She  
9 has told me that she will have like doughnuts and  
10 coffee and everything here for you in the morning. I  
11 guess we will term that as a continental breakfast.  
12 If you would rather have a full breakfast, then you  
13 can do that, and the bailiffs will take you to, I  
14 guess, well, wherever. They will see that you get a  
15 breakfast on that. The bailiffs are there to assist  
16 you.

17 You, of course, can't have any communication  
18 with the bailiffs concerning anything in this case,  
19 but you can communicate with them in relation to what  
20 your needs are, and they are the liaison between you  
21 and me. But they are not, you are not to discuss the  
22 case with them or allow them to discuss it in your  
23 presence, and certainly not when you are doing any  
24 deliberations. Of course, you are not to deliberate  
25 or form any opinions in this matter until such time  
26 as I give the case to you, and that will be at the  
27 end of the case after I have given you the  
28 instructions and you have heard all the testimony.  
29 You are not to discuss it amongst yourselves until

1           such time as I tell you that you can.

2           Now you are going to be staying at the Ramada.  
3           How many of you need to have clothes delivered to  
4           you? (Several hands go up.) Okay, if you will  
5           communicate that to the bailiffs, they will call  
6           whoever needs to, they need to and communicate with  
7           them. You tell them, give them a list of what you  
8           need or whatever like that. They will get hold of  
9           whoever they have got to get hold of, and they will  
10          have it delivered, and then they will deliver it to  
11          them. I can't let you communicate with your families  
12          because of the nature of this case in that you have  
13          to be sequestered. But if you have any needs that  
14          are not being addressed, you let the bailiffs, tell  
15          the bailiffs. They will talk to me, and we will see  
16          that they get addressed.

17          As I said earlier, my intention is for this case  
18          to move right along so that you are not here not  
19          doing anything. We will start at 9 o'clock. We will  
20          probably quit around 12:00 and take a lunch break.  
21          We will come back, and we will probably go to 5:00.  
22          It could be-- well, we will go to 5:00, I am pretty  
23          sure each day. It could be that we go a little bit  
24          longer depending on-- I may have one witness go  
25          longer than the other one. I might can work in two  
26          witnesses, and it might cut down on some time like  
27          that. But I'm not going to tire you out. We will  
28          take plenty of breaks during the day, and if you  
29          have, if it comes that you need a break, hold up your

1 hand. We will stop at that point and give you a  
2 break.

3 Now I forget what we did about the-- I don't  
4 think you are going to have a television. I tried to  
5 see if we could cut off, just black out some of the  
6 channels, but this will be reported on television,  
7 and they could not black out the channels, so you  
8 won't have that. We can furnish you with some  
9 reading materials and stuff like that or anything  
10 else-- if you will submit it to them what you want, I  
11 will talk, we will discuss it, and we will get you  
12 something so you will have something to entertain you  
13 while you are sequestered.

14 You cannot discuss this matter amongst  
15 yourselves. You cannot discuss it with anybody else  
16 or let them discuss it in your presence. You can't,  
17 I can probably get you newspapers. We will have to  
18 edit them, censor them I guess would be the best  
19 term, somewhat, but we can get you newspapers and  
20 reading material and stuff like that as long as it  
21 doesn't contain anything about this case.

22 Okay. I need to swear the bailiffs.

23 BY COURTROOM BAILIFF: They are here.

24 BY THE COURT: Okay.

25 (More Bailiffs enter the courtroom, and six  
26 Bailiffs were sworn as follows:)

27 BY THE COURT: Let me swear all y'all too  
28 because y'all will be here in the daytime. If y'all  
29 will raise your right hand, please.

1 Will you as bailiff to the jury in the case of  
2 the State of Mississippi versus Curtis Flowers do  
3 solemnly swear or affirm that you will attend on such  
4 jury and perform such duties as the Court may  
5 prescribe therein and in all things faithfully  
6 discharge the duties devolving upon you so help you  
7 God?

8 BY ALL BAILIFFS: I do.

9 BY THE COURT: Okay. All right. I will turn  
10 the jury over to the bailiffs, and some of them are  
11 going to need to communicate with you about what they  
12 need clothes wise and whatever. And then y'all can  
13 make whatever phone calls are necessary to have them  
14 delivered to you. Of course, I will give you the  
15 same instructions I just gave them. They can't talk  
16 to you about the case, and y'all can't talk to them  
17 about it. Okay?

18 Any further instructions by either side?

19 BY MR. EVANS: None from the State, Your Honor.

20 BY MR. JOHN GILMORE: None from the Defense.

21 BY THE COURT: Okay, see you in the morning at 9  
22 o'clock. Everybody stay in the courtroom until the  
23 jury leaves and the bailiffs.

24 (JURY LEAVES THE COURTROOM.)

25 BY THE COURT: Court is adjourned until in the  
26 morning at 9 o'clock.

27 (COURT WAS RECESSED AT 5:20 P.M. ON OCTOBER 13,  
28 1997.)  
29

1 (COURT WAS DULY OPENED AT 9:00 A.M. ON TUESDAY,  
2 OCTOBER 14, 1997. THE FOLLOWING STATE'S EXHIBITS HAD BEEN  
3 PRE-MARKED FOR IDENTIFICATION WITH THE COURT REPORTER PROVIDING  
4 A LIST TO THE COURT AND ALL COUNSEL:)

5 PHOTOGRAPHS WERE MARKED AS EXHIBITS S-1 THROUGH S-72  
6 WITH THE CORRESPONDING SLIDES MARKED AS EXHIBITS S-1A THROUGH  
7 S-72A; PHOTOGRAPHS OF SHOE TRACK WERE MARKED AS EXHIBITS S-73  
8 THROUGH S-76; SKETCH OF SCENE BY MS. SCHOENE AS S-77; KEY FOR  
9 SKETCH AS S-77A; PHOTO LINEUP (BLACK AND WHITE PHOTOS) AS S-78;  
10 MAP OF DOWNTOWN AREA AS S-79; OVERLAYS AS S-79A AND S-79B; MAP  
11 OF DOWNTOWN AS S-80; OVERLAY AS S-80A; DRAWING OF FRONT OF  
12 STORE AS S-81; OVERLAY AS S-81A; DRAWING OF CRIME SCENE BY  
13 SCHOENE AS S-82; OVERLAY AS S-82A; MAP OF LARGER WINONA AREA AS  
14 S-83; OVERLAY AS S-83A; ONE SMALL WHITE BOX CONTAINING  
15 PROJECTILE AS S-84; ONE BROWN ENVELOPE CONTAINING PROJECTILE AS  
16 EXHIBIT S-85; ONE WHITE ENVELOPE CONTAINING PROJECTILE AS  
17 EXHIBIT S-86; GUNSHOT RESIDUE KIT AS EXHIBIT S-87; SACK  
18 CONTAINING FILA TENNIS SHOE BOX AS EXHIBIT S-88; SACK  
19 CONTAINING FILA TENNIS SHOE BOX (WITH SHOES) AS EXHIBIT S-89;  
20 ONE EVIDENCE BAG CONTAINING PROJECTILE IN TUBE AS EXHIBIT S-90;  
21 ONE EVIDENCE BAG CONTAINING PROJECTILE IN TUBE AS EXHIBIT S-91;  
22 ONE WHITE BOX CONTAINING PROJECTILE LABELED 1B AS EXHIBIT S-92;  
23 ONE WHITE BOX CONTAINING PROJECTILE LABELED 1C AS EXHIBIT S-94;  
24 ONE WHITE BOX CONTAINING PROJECTILE LABELED AS 1 AS EXHIBIT  
25 S-95; ONE WHITE BOX CONTAINING PROJECTILE LABELED AS 2 AS  
26 EXHIBIT S-96; ONE WHITE BOX CONTAINING PROJECTILE LABELED AS 3  
27 AS EXHIBIT S-97; ONE WHITE BOX CONTAINING PROJECTILE LABELED AS  
28 4 AS EXHIBIT S-98; ONE WHITE BOX CONTAINING PROJECTILE LABELED  
29 AS 5 AS EXHIBIT S-99; ONE WHITE BOX CONTAINING LIVE CARTRIDGE



1 AS EXHIBIT S-100; ONE BROWN BAG CONTAINING GRAY MONEY BAG AS  
2 EXHIBIT S-101; CHECK DATED 7/5/96 FOR \$82.58 TO CURTIS FLOWERS  
3 AS EXHIBIT S-102; WAIVER OF RIGHTS DATED 7/16/96 AS EXHIBIT  
4 S-103; WAIVER OF RIGHTS DATED 7/18/96 AS EXHIBIT S-104; WAIVER  
5 OF RIGHTS DATED 7/23/96 AS EXHIBIT S-105; DAILY LEDGER SHEET  
6 DATED 7/15/96 AS EXHIBIT S-106; PHOTO LINEUP (IN COLOR) AS  
7 EXHIBIT S-107; VIDEOTAPE AS EXHIBIT S-108; INDEX CARD SHOWING  
8 HOURS OF CURTIS FLOWERS AS EXHIBIT S-109.

9 (WITH THE COURT, ALL COUNSEL, THE DEFENDANT, AND  
10 THE JURY PRESENT, PROCEEDINGS ON OCTOBER 14, 1997, WERE AS  
11 FOLLOWS:)

12 BY THE COURT: Y'all want to call your witnesses  
13 around for today and let's swear them all at once.

14 BY MR. EVANS: Yes, sir.

15 BY THE COURT: All the witnesses-- well, Mr.  
16 Evans, I will let you get them around.

17 BY MR. HORAN: Judge, we have some that are in  
18 transit.

19 BY THE COURT: Y'all just let me know and make  
20 sure they stay out of the courtroom. And as some of  
21 them get called, try to remember who has been sworn  
22 and who hasn't.

23 BY MR. EVANS: The rest of them will be here in  
24 just a minute.

25 BY THE COURT: Okay, this is all you have got  
26 for now?

27 BY MR. EVANS: No, sir. There are a couple more  
28 that were coming in the door. All of these may not  
29 testify today, but I thought we would go ahead and



1 swear everybody that was here at this point.

2 BY THE COURT: That will be fine. Just help me  
3 keep up with it, okay?

4 BY MR. EVANS: Yes, sir.

5 (Pause while more witnesses entered the  
6 courtroom.)

7 BY THE COURT: Okay, y'all raise your right  
8 hand.

9 (APPROXIMATELY TWENTY WITNESSES WERE SWORN BY  
10 THE CLERK.)

11 BY THE COURT: Who will you have first, Mr.  
12 Horan?

13 BY MR. HORAN: Johnny Hargrove.

14 BY THE COURT: I will ask the others of you to go  
15 back to the witness room.

16 JOHNNY HARGROVE,  
17 a black male called to testify as a witness by the State,  
18 having first been duly sworn, testified as follows, to-wit:

19 BY THE COURT: State your name for the record,  
20 please, sir.

21 BY THE WITNESS: Johnny Hargrove.

22 BY MR. BILLY GILMORE: Your Honor, may we  
23 approach?

24 BY THE COURT: Yes.

25 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
26 THE JURY AS FOLLOWS:)

27 BY THE COURT: This is the side bar?

28 BY MR. HORAN: I guess.

29 BY MR. BILLY GILMORE: Can we order salad or

1 drinks? I have note pads and some pencils for the  
2 jury if the Court would like to give them to them.

3 BY MR. HORAN: If they ask for it, I think they  
4 are providing their own.

5 BY THE COURT: They are already passing them  
6 out. Here is what I'm going to tell them. I'm going  
7 to tell them that they can take notes, but they are  
8 only for their own personal use. Their own  
9 recollection must be what they base their decision  
10 on, and those notes are not to be used as evidence.  
11 Okay?

12 BY MR. BILLY GILMORE: Yes, sir.

13 BY MR. HORAN: Do you have any objection to  
14 that?

15 BY MR. BILLY GILMORE: No

16 END BENCH CONFERENCE.

17 BY THE COURT: Ladies and gentlemen, it depends  
18 on different cases calling for different things. In  
19 this case both sides, and generally they have to  
20 agree; they have agreed that because of the length of  
21 the trial or whatever, you are entitled to take notes  
22 if you would like to take notes about what is going  
23 on. Now let me tell you what you can do with those.  
24 You can only use them for yourself. In other words,  
25 you can't share your notes with each other. They are  
26 for your own personal recollection. You are to rely  
27 on what you personally recollect over the notes. In  
28 other words, you should rely on your memory over the  
29 notes, but the notes can be used to refresh your

1 memory. They are not to be used by you for any kind  
2 of evidentiary purpose. The only evidence that you  
3 can use is the evidence that comes from this witness  
4 stand. There will be some exhibits that I will send  
5 back there for you. You can use those, but you are  
6 entitled if you want to take notes for your own  
7 purposes, for your own recollection, that is okay.  
8 All right? All right, Mr. Horan.

9 BY MR. HORAN: Thank you.

10 (NOTE: Note pads and pens supplied by Mr.  
11 Gilmore were sitting on the table in view of the jury  
12 but were not passed out until later as will be  
13 noted.)

14 DIRECT EXAMINATION BY MR. HORAN:

15 Q. You are Johnny Hargrove?

16 A. Yes, sir.

17 Q. Do you hold any official capacity in Winona,  
18 Mississippi?

19 A. Chief of Police.

20 Q. And on or about July the 16th of 1996, were you the  
21 Chief of Police of Winona?

22 A. Yes, sir.

23 Q. I want to direct your attention to approximately  
24 10:21 in the morning of that particular day. Did you receive a  
25 call to be dispatched to any location in Winona?

26 A. Tardy Furniture.

27 Q. And did you receive that from -- were you on duty at  
28 that time, or were you in uniform working that particular day?

29 A. Yes, sir.

1 Q. And you received that, I assume, from the Police  
2 Department?

3 A. Yes, sir.

4 Q. Once you arrived at Tardy Furniture, would you tell  
5 the Court and the jury what you did.

6 A. Yeah, I pulled up out front, and I proceeded to go  
7 into the building. And from about, from where I'm sitting  
8 right to halfway of the courtroom I seen Ms. Tardy laying in  
9 the floor.

10 Q. That would be approximately 30 feet, 35 feet maybe?

11 A. Yes, sir.

12 Q. Go ahead.

13 BY THE COURT: You need to answer out, Mr.  
14 Hargrove, so she can make a record of it.

15 BY THE WITNESS:

16 A. Okay, after I seen her laying in the floor--

17 Q. --When you say "her," you said Ms. Tardy. What was  
18 her name?

19 A. Bertha Tardy.

20 Q. Did you notice anything about the body of Bertha  
21 Tardy?

22 A. She was laying on her stomach face down.

23 Q. What did you do then?

24 A. I proceeded on to where her body was.

25 Q. Okay, after you--

26 A. --Then--

27 Q. Go ahead.

28 A. After I got where her body was, I glanced to my  
29 right. That's when I seen Ms. Rigby.

1 Q. Would that be Carmen Rigby?

2 A. Carmen Rigby.

3 Q. Would you describe what you saw when you noticed Ms.  
4 Rigby's body?

5 A. I noticed BoBo still breathing.

6 Q. Okay, you say BoBo; was that Derrick Stewart?

7 A. Yes, sir.

8 Q. Okay, when you say breathing, would you describe for  
9 the jury's benefit what he was doing? Was he face down or face  
10 up?

11 A. Sort of face down gurgling, breathing. So then when  
12 I seen Robert's body too--

13 Q. You say Robert. Was that Robert Golden?

14 A. Robert Golden.

15 Q. Did you know all these individuals, Chief Hargrove,  
16 prior to that date?

17 A. Yes, sir.

18 Q. You have lived in Winona for, I assume, almost all  
19 your life?

20 A. Yes, sir.

21 Q. What did you do then?

22 A. After I seen all the bodies, I went-- I didn't have  
23 my portable with me, so I went back to my patrol vehicle, and I  
24 called MedStat, and then I called for my backup.

25 Q. Did you call anybody else?

26 A. Yes, sir. I called for my backup.

27 Q. Did you take any steps to, when you say you left the  
28 building, how did you do that?

29 A. I started backing out with my weapon drawn.

1 Q. You pulled your weapon?

2 A. Yes, sir.

3 Q. Did it appear to you that any of the other persons in  
4 the store other than Derrick Stewart were alive?

5 A. He the only one looked like that was alive.

6 Q. I want to hand you what has been marked for  
7 identification purposes as State's Exhibits 1, 2, 3 and 4.

8 (Photographs shown to Counsel opposite.)

9 BY A MALE JUROR: Your Honor, could I have a  
10 note pad and pen, please?

11 BY THE COURT: Yes, sir. Mr. Horan, would you  
12 mind handing it.

13 BY MR. HORAN: Do you want me to give it to  
14 him?

15 BY THE COURT: If you don't mind.

16 BY MR. HORAN: I don't mind. (Hands pad and pen  
17 to that juror only.) May I proceed, Your Honor?

18 BY THE COURT: Uh-hum.

19 BY MR. HORAN:

20 Q. I hand you what has been marked for identification as  
21 Exhibits 1 through, Exhibit 1, 2, 3, 4. Tell me whether or not  
22 you can identify those photographs. And if you would, refer to  
23 the tag on the back of each photograph.

24 A. Exhibit 4, that's where we started roping off the  
25 crime scene.

26 Q. Okay, do you see Tardy Furniture in that particular  
27 photograph?

28 A. Yes, sir, to the right.

29 Q. Okay, and what street is that right there that Tardy

1 Furniture is on?

2 A. Front Street.

3 Q. Front Street. That is in downtown Winona?

4 A. Yes, sir.

5 Q. Does that-- go ahead to the next photograph.

6 A. This is still showing the front of Tardy Furniture  
7 where we had the crime scene roped off.

8 Q. Is that a closer angle?

9 A. Yes, sir.

10 Q. Than S-4?

11 A. Yes, sir.

12 BY THE COURT: Excuse me just a minute. Can  
13 y'all hear him?

14 BY SEVERAL JURORS: No.

15 BY THE COURT: You are going to have to speak  
16 up, Chief.

17 BY MR. HORAN:

18 Q. Okay, would you identify what the next photograph is,  
19 please, sir?

20 A. It's going to be in front of Tardy's. Also, it's  
21 roped off there, state trooper vehicle, and a couple more  
22 investigator's vehicles there.

23 Q. Okay, and the final photograph, can you identify that  
24 particular photograph?

25 A. It's going to be a closer angle of Tardy Furniture.

26 Q. Is that from in front of the Tardy Furniture store?

27 A. Yes, sir.

28 Q. Do all four of those photographs fairly and  
29 accurately depict Tardy Furniture store as it was on July the

1 16th, 1996, when you arrived there?

2 A. Yes, sir.

3 Q. With the exception of the police tape?

4 A. Yes, sir.

5 BY MR. HORAN: Your Honor, I move the  
6 introduction of those particular.

7 BY MR. BILLY GILMORE: No objection.

8 BY THE COURT: Let them be marked and admitted.  
9 That is 1 through 4?

10 BY MR. HORAN: Yes, sir.

11 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S  
12 EXHIBITS S-1, S-2, S-3, AND S-4 FOR IDENTIFICATION  
13 WERE NOW RECEIVED IN EVIDENCE.)

14 (Mr. Horan shows two more photographs to Counsel  
15 opposite.)

16 BY MR. HORAN: We need to approach, Your Honor.

17 BY THE COURT: Okay.

18 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
19 THE JURY AS FOLLOWS:)

20 (Photographs shown to the Court.)

21 BY MR. HORAN: Your Honor, at this time I was  
22 going to ask the officer to identify those two  
23 photographs and go through the normal procedure and  
24 then ask that they be admitted if the predicate has  
25 been laid for the introduction.

26 BY MR. JOHN GILMORE: Your Honor, we are going  
27 to object. They are unduly and highly prejudicial.  
28 There are other photographs that would better and  
29 more accurately depict how Ms. Tardy was located if



1           that's what they intend on doing. A close-up shot of  
2           the head with all of the blood around it as in S-15  
3           would be highly prejudicial. The S-17 that they  
4           intend to show shows the positions of Mr. Rigby [sic]  
5           And Ms. Carmen and where BoBo Stewart's body would  
6           have been, but it's a close-up of the blood and it's  
7           highly prejudicial.

8                   **BY THE COURT:** The objection is overruled.

9                                   END BENCH CONFERENCE

10          BY MR. HORAN:

11               Q. Chief Hargrove, after you called for backup, and I  
12               assume you called for an ambulance also; right?

13               A. Yes, sir.

14               Q. Did you return back in the store, into the store?  
15               Did you go back in Tardy Furniture?

16               A. No, sir.

17               Q. Okay, you stayed outside?

18               A. Stayed outside. By that time Bill, Bill Thornburg  
19               pulled up.

20               Q. You were securing the scene?

21               A. Securing the scene.

22               Q. Okay, you were making sure nothing was disturbed on  
23               the inside?

24               A. On the inside, but when MedStat got there, we went  
25               back on the inside.

26               Q. Right.

27               A. I went back then.

28               Q. I want to hand you what has been marked for  
29               identification purposes State's Exhibit 17 and 15. Tell me

1 whether or not you can identify those two photographs or what  
2 they depict?

3 A. The first one is going to be Ms. Tardy's.

4 Q. Okay, that is Bertha Tardy?

5 A. Yes.

6 Q. Does that picture fairly and accurately depict what  
7 you saw on July the 16th, 1996, when you went in that store?

8 A. Yes, sir.

9 Q. All right, and identify the second photograph in your  
10 hand, please, sir. Can you identify that photograph?

11 A. Yes, sir.

12 Q. Can you identify what that photograph depicts?

13 A. Okay. It's showing Ms. Rigby's body, Robert Golden's  
14 body, and it's got the cap where Stewart was laying.

15 Q. You say Stewart, was that BoBo Stewart?

16 A. BoBo Stewart, and it's also showing a footprint we  
17 found.

18 Q. Okay, you say footprint, footprint on the floor  
19 there. Did you see that when you went into the store  
20 initially?

21 A. I seen it after I went in there with MedStat to get  
22 the body, and after that, we started checking.

23 Q. Appear to be blood?

24 A. Yes, sir, where somebody stepped in blood.

25 BY MR. HORAN: Okay. At this time, Your Honor,  
26 we move the introduction of these two photographs.

27 BY THE COURT: I note your objection.

28 BY MR. JOHN GILMORE: It is a continuing  
29 objection, Your Honor.

1 BY THE COURT: The numbers on that, Mr. Horan?

2 BY MR. HORAN: Number 17 and 14.

3 BY THE COURT: 17 and 14? I thought one was 15.

4 BY MR. HORAN: 15; I'm sorry.

5 BY THE COURT: Let them be admitted.

6 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S

7 EXHIBITS S-15 AND S-17 WERE NOW ADMITTED IN

8 EVIDENCE.)

9 (Mr. Horan confers with Mr. Gilmore.)

10 BY MR. HORAN:

11 Q. Chief, after you noticed the bloody footprints, did  
12 you take any steps to make sure whether or not anyone at the  
13 scene had actually made those bloody footprints?

14 A. Yes, sir.

15 Q. What steps did you take?

16 A. I started checking the bottom of their shoes.

17 Q. And did you see Sam Jones at the scene there?

18 A. Yes, sir.

19 Q. Did you check his shoes?

20 A. Yes, sir.

21 Q. And did you make an inspection or take an inspection  
22 of all the EMT's or personnel going in?

23 A. Yes, sir.

24 Q. After you inspected that, did you find any soles that  
25 appeared to be the same as the bloody footprints?

26 A. They were all different.

27 Q. They were all different. I want to hand you what has  
28 been marked for identification purposes. You may have to hold  
29 this to the light. Tell me whether or not these particular

1 slides depict the photographs that I showed you previously,  
2 please, sir, and you can do them by the number, right hand  
3 corner. Just look at them all at one time and identify that,  
4 1A?

5 A. This is 1A; it's going to be closer front of Tardy's.

6 Q. Okay, is that the same as the photograph I showed  
7 you, Exhibit 1, previously?

8 A. Yes, sir.

9 Q. All right, go to 2. Does number 2 show-- is that a  
10 slide of the photograph that was previously introduced as  
11 State's Exhibit 2?

12 A. Yes, sir.

13 Q. Okay. And number 3A, is that a slide and does it  
14 fairly and accurately depict the photograph identified  
15 previously as State's Exhibit 3?

16 A. Yes, sir.

17 Q. And 4, does that fairly-- is that a slide and does it  
18 fairly and accurately depict the photograph previously  
19 introduced as photograph number 4?

20 A. Yes, sir.

21 Q. What is identified now as 15A, does that fairly and  
22 accurately depict the body of Bertha Tardy that was in the  
23 photograph introduced previously--

24 A. --yes, sir--

25 Q. --as 15?

26 A. Yes, sir.

27 Q. And slide identified as 17A, does it fairly and  
28 accurately depict the body of Carmen Rigby and Robert Golden  
29 and the location of Derrick, BoBo's body that was previously

1 introduced in photograph 17?

2 A. Yes, sir.

3 BY MR. HORAN: Your Honor, at this time I move  
4 for the introduction of these particular slides.

5 BY THE COURT: Okay, just for--

6 BY MR. BILLY GILMORE: We would object, Your  
7 Honor. It's cumulative. He has already introduced  
8 pictures.

9 BY THE COURT: Okay, that objection is  
10 overruled. As we go through these, when you have got  
11 the slides, let's just let them identify them all at  
12 once.

13 BY MR. HORAN: I will.

14 BY THE COURT: We will get them all marked at  
15 the same time.

16 BY MR. HORAN: I didn't have them together when  
17 we did the photographs.

18 (SLIDES DEPICTING THE PHOTOGRAPHS PREVIOUSLY  
19 RECEIVED IN EVIDENCE MARKED AS STATE'S EXHIBITS S-1A,  
20 S-2A, S-3A, S-4A, S-15A, AND S-17A WERE NOW RECEIVED  
21 IN EVIDENCE.)

22 BY MR. HORAN:

23 Q. Chief Hargrove, did you call anybody else other than  
24 the EMT's and the Sheriff's Department in backup?

25 A. Yeah, I called Med-- that's what I said. I called  
26 MedStat. I called the coroner, and I called Doug's office.

27 Q. The DA's office?

28 A. The DA's office and I called an investigator from  
29 Greenwood.

1 Q. Highway Patrol?

2 A. Highway Patrol, and I called the Crime Lab.

3 Q. And you maintained until the Highway Patrol  
4 investigators got there and the crime scene specialists from  
5 the lab, you maintained the scene?

6 A. Yes, sir.

7 Q. What county and state is the City of Winona located  
8 in and more particularly, Tardy Furniture?

9 A. City of Winona, Montgomery County.

10 Q. State of Mississippi?

11 A. Yes, sir.

12 BY MR. HORAN: I tender.

13 CROSS-EXAMINATION BY MR. BILLY GILMORE:

14 Q. Chief, did you handle the investigation or did you  
15 turn it over to the state investigators?

16 A. Turned it over to the state.

17 Q. So your initial appearance at the crime scene is  
18 really the only thing you did throughout the investigation  
19 other than assist the state investigators?

20 A. Yes, sir.

21 Q. Now when you got to the store, was the door open?

22 A. It was closed.

23 Q. Was it unlocked?

24 A. Yes, sir.

25 Q. Do you know how many people had gone in and out of  
26 that store that morning?

27 A. No, I do not.

28 Q. Now you mentioned there was a track inside the  
29 store. Do you have any idea who made that track?

1 A. No, sir. I do not.

2 Q. Do you remember what vehicles were parked outside the  
3 store when you first drove up there?

4 A. No, sir. It was some cars parked from the cleaners  
5 people, work at the cleaners.

6 Q. Now where exactly were you when you got the radio  
7 dispatch to go to the Tardy's Furniture store?

8 A. About, I think coming off Greensboro.

9 Q. Had you been over around Cemetery Lane that morning,  
10 or were you in that vicinity when you got the call?

11 A. I don't believe so; could have been. I don't know.  
12 I was patrolling that morning.

13 Q. I believe they commonly call it "The Project" over  
14 close to the cemetery. Had you patrolled in that area that  
15 morning?

16 A. I could have.

17 Q. But you don't remember exactly where you were when  
18 you got the call?

19 A. No, sir. I think I was coming off Greensboro.

20 Q. Okay, and how far is Greensboro from the Tardy  
21 Furniture store?

22 A. It's right down from the station.

23 Q. Beg your pardon?

24 A. Right down from the station.

25 Q. Right down from the police station?

26 A. Yes, sir.

27 Q. How far in distance would it be from where you were  
28 until you got to the store? How many blocks, city blocks?

29 A. I think about three blocks, something like that. I

1 was pretty close.

2 Q. Okay, and you got the dispatch, I believe you said  
3 10:21?

4 A. Yes, sir.

5 Q. And how long did it take you to get around there?

6 A. It wasn't long. Pretty quick.

7 Q. Five minutes? Ten minutes?

8 A. No, less than that.

9 Q. How many minutes would you think?

10 A. About, probably a minute or on a minute. It wasn't,  
11 I don't think quite a minute.

12 Q. Does the police department make a radio log when  
13 people call in or they call the police officers?

14 A. Yes, sir.

15 Q. Now did you physically call for an ambulance, or did  
16 you call the dispatcher to call for an ambulance?

17 A. I told the dispatcher to call.

18 Q. Okay. So you went back to your patrol car and called  
19 the dispatcher at the police department, and actually the  
20 dispatcher called the ambulance?

21 A. Yes, sir.

22 Q. And the dispatcher made all these other calls you  
23 referred to?

24 A. Yes, sir.

25 Q. And you stayed out near your car all this time?

26 A. Yes, sir.

27 Q. And you didn't see anybody else go in or out the  
28 store?

29 A. No, sir.



1 Q. And you didn't return to the store until the  
2 ambulance got there; is that right?

3 A. I went back in it then.

4 Q. Okay. All right, at that time did you search the  
5 building to see if anybody else was in there?

6 A. No, sir. I was waiting for the backup to come.

7 Q. Did your backup get there before the ambulance got  
8 there?

9 A. They came a little after--

10 Q. A little after?

11 A. --about, almost the same time.

12 Q. Now the track, did you notice it when you first went  
13 in there, or did you notice it after the ambulance personnel  
14 left?

15 A. After they left.

16 Q. After they left?

17 A. Yes, sir.

18 Q. And you noticed a track, a shoe print, in other  
19 words?

20 A. Yes, sir.

21 Q. Now you said Sam Jones had been there earlier than  
22 you had?

23 A. Yes, sir.

24 Q. And you checked his shoes?

25 A. Yes, sir.

26 Q. It wasn't him?

27 A. Wasn't him.

28 Q. And some time later you checked the ambulance  
29 personnel's shoes?

1 A. Yes, sir.

2 Q. Did you inquire had anybody changed shoes that  
3 morning before they came back?

4 A. They had on the same shoes they left in. They had a  
5 boot type shoe on.

6 Q. Boot type shoe?

7 A. Yes, sir.

8 Q. All right, did you check anybody else's shoes that  
9 was around that scene that morning?

10 A. I checked the ones that were around it.

11 Q. How long was it before other people came other than  
12 your backup, other officers?

13 A. It was shortly after.

14 Q. Okay, when you say shortly, about how much time?

15 A. We are talking about, about 5 minutes, something like  
16 that.

17 Q. Was that other Winona Police Department, Sheriff's  
18 Department?

19 A. One MHP unit and a Sheriff's Department.

20 Q. And how long was it before the investigators from the  
21 Highway Patrol got there, the state investigators?

22 A. I will have to look back on the log on that. I can't  
23 recall that.

24 Q. Was it an hour?

25 A. Somewhere in there. It wasn't quite though.

26 Q. Okay, and I believe you also called the District  
27 Attorney's Office, and did he send his investigator down there  
28 also?

29 A. He came hisself.

1 Q. Okay, and how long was it before he got there?

2 A. Just like I say, I didn't check the time on it.

3 Q. I believe the District Attorney's Office is in  
4 Grenada?

5 A. Yes, sir.

6 Q. And how far is it between Winona and Grenada?

7 A. Twenty something miles.

8 Q. Do you know anything else about the case, Chief?

9 A. No, sir.

10 Q. Basically, all you know about it is you appeared at  
11 the crime scene at the initial investigation?

12 A. Yes, sir.

13 Q. And the rest of the investigation was handled by  
14 someone else?

15 A. Yes, sir.

16 BY MR. BILLY GILMORE: Court indulge me a  
17 moment.

18 REDIRECT EXAMINATION BY MR. HORAN:

19 Q. It wasn't the shoe print, Chief, that you  
20 identified--

21 BY THE COURT: --Wait. I don't think he-- were  
22 you through?

23 BY MR. HORAN: I thought he was. I'm sorry.

24 BY MR. BILLY GILMORE: May I approach the  
25 witness, Your Honor?

26 BY THE COURT: Yes.

27 CONTINUING CROSS EXAMINATION BY MR. BILLY GILMORE:

28 Q. Chief--

29 BY THE COURT: Do you want to show that to--

1 BY MR. HORAN: --We need to approach, Your  
2 Honor.

3 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
4 THE JURY AS FOLLOWS:)

5 (Document handed to the Court.)

6 BY MR. HORAN: Your Honor, first of all--

7 BY THE COURT: --Wait a minute; let me read it.  
8 (Pause) Okay.

9 BY MR. HORAN: It has not been identified. Do  
10 you want to put a sticker on it or something so we--

11 BY THE COURT: --Wait a minute. Let's see what,  
12 what are you going to do with it?

13 BY MR. BILLY GILMORE: First, I'm going to let  
14 the Chief identify it.

15 BY THE COURT: For what purpose?

16 BY MR. BILLY GILMORE: Well, it is going to be  
17 testimony that this reward had been offered. Several  
18 of these witnesses are going to be able to testify.

19 BY THE COURT: What now?

20 BY MR. BILLY GILMORE: This reward has been  
21 offered to several of these witnesses--

22 BY MR. HORAN: --Your Honor, we are talking  
23 about stuff that he is not -- if we are going to do a  
24 side bar, we need to get up here so we can do a side  
25 bar.

26 BY THE COURT: Okay; y'all get closer.

27 BY MR. BILLY GILMORE: There is going to be  
28 witnesses that are going to be here that is called by  
29 the State. We know for a fact they offered this

1           reward to them to come forward to give them  
2           information.

3           **BY THE COURT:** Then you may get it introduced  
4           through them if you can prove that, but just the fact  
5           that there was a reward issued, I mean offered is not  
6           relevant. It would only be relevant if you can show  
7           some bias of some witness or prejudice by it, and you  
8           would have to do that through that witness. The fact  
9           that there was rewards--

10          **BY MR. HORAN:** He has already testified he had  
11          nothing else to do with the case.

12          **BY THE COURT:** Right.

13          **BY MR. BILLY GILMORE:** Well, I am sure he would  
14          be aware of this because they were plastered all over  
15          Winona.

16          **BY MR. HORAN:** What probative value does it  
17          have, Your Honor?

18          **BY THE COURT:** Well, I have just said I'm not  
19          going to allow it in. I think the appropriate thing  
20          for the record is it needs to be marked for  
21          identification so there can be a record of what it  
22          is, and then you can offer it, so let's mark it as, I  
23          guess you can mark it as D-1 for identification.

24          **BY MR. BILLY GILMORE:** Do you want him to  
25          identify it first?

26          **BY MR. HORAN:** Uh-uh.

27          **BY MR. BILLY GILMORE:** You just want to submit  
28          it for identification?

29          **BY THE COURT:** Just submit it for

1 identification. You have identified it to the  
2 Court. I assume that you are asking that it be  
3 admitted through this witness?

4 BY MR. BILLY GILMORE: Yes.

5 BY MR. EVANS: Also, for the record if I may, I  
6 think this Court knows that at least six different  
7 occasions I have brought up that we have not been  
8 furnished any discovery, and any items that they  
9 attempt to introduce into evidence at this point I  
10 object to strongly because we have been furnished  
11 nothing.

12 BY THE COURT: Well, I will just have to take  
13 that at the time. I can't do it ahead of time.

14 BY MR. EVANS: At this point I'm just making it  
15 as far as this one document.

16 BY THE COURT: I know, and you will just have to  
17 make as they all come up.

18 BY MR. BILLY GILMORE: For the record, we  
19 obtained this only yesterday.

20 BY THE COURT: Well, whatever; I'm not going to  
21 let it in.

22 END BENCH CONFERENCE.

23 (\$30,000 REWARD FLIER WAS MARKED BY THE COURT  
24 REPORTER AS DEFENDANT'S EXHIBIT D-1 FOR  
25 IDENTIFICATION BUT WAS NOT SEEN BY THE JURY AT THIS  
26 TIME.)

27 BY THE COURT: Anything further, Mr. Gilmore,  
28 from this witness?

29 BY MR. BILLY GILMORE: Not at this time, Your

1 Honor.

2 BY THE COURT: Mr. Horan.

3 REDIRECT EXAMINATION BY MR. HORAN:

4 Q. Chief Hargrove, when you saw the bloody footprints,  
5 you took steps to make sure that no one had-- you were  
6 protecting the scene; correct?

7 A. Yes, sir.

8 Q. You were making sure that no one that came in there  
9 around the scene made those footprints; correct?

10 A. Yes, sir.

11 Q. Whose blood was the print next to?

12 A. Stewart.

13 Q. BoBo Stewart?

14 A. Yes, sir.

15 BY MR. HORAN: That's all I have of this  
16 witness, Your Honor.

17 BY THE COURT: You may return to the witness  
18 room, Chief. Who do you have next?

19 BY MR. EVANS: Sam Jones.

20 WITNESS LEAVES COURTROOM.

21 BY THE COURT: Okay, let me see the attorneys up  
22 here one more time.

23 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
24 THE JURY AS FOLLOWS:)

25 BY THE COURT: Because of the nature of this  
26 courtroom, y'all are going to have to use the podium,  
27 and I'm going-- I know you have got to approach  
28 witnesses to let them see the stuff, but you are  
29 going to need to back off from them because they are

1 going to talk to you, and those people are not going  
2 to be able to hear.

3 BY MR. HORAN: Okay.

4 BY THE COURT: See when you talk from over  
5 there, he turns--

6 BY MR. HORAN: I understand.

7 BY THE COURT: Okay.

8 END BENCH CONFERENCE.

9 BY A MALE JUROR: Your Honor, could the rest of  
10 them get the pads?

11 BY THE COURT: Yes, sir.

12 BY MR. EVANS: Would you like for me to pass  
13 them out?

14 BY THE COURT: Yes, sir.

15 (Pads and pens were passed out to the rest of  
16 the members of the jury.)

17 SAM JONES, JR.,

18 a black male called to testify as a witness by the State,  
19 having first been duly sworn, testified as follows, to-wit:

20 BY THE COURT: All right, Mr. Jones, you need to  
21 turn around so they can hear you. I will hear you.

22 BY THE WITNESS: Yes, sir.

23 BY THE COURT: Okay, you just need to talk to  
24 Mr. Evans. State your name for the record.

25 BY THE WITNESS: Yes, sir. Sam Jones, Jr.

26 BY MR. EVANS: May I proceed, Your Honor?

27 BY THE COURT: Yes.

28 DIRECT EXAMINATION BY MR. EVANS:

29 Q. Mr. Jones, where do you live?



- 1           A.    I live at 302 Harper Street in Winona.
- 2           Q.    How long have you lived in Winona, Mississippi?
- 3           A.    All my life.
- 4           Q.    And how old are you now?
- 5           A.    77.
- 6           Q.    All right, Mr. Jones, have you worked for Tardy
- 7 Furniture?
- 8           A.    Beg your pardon?
- 9           Q.    Have you worked for Tardy Furniture there in Winona?
- 10          A.    Oh, yes, sir.
- 11          Q.    How many years did you work for Tardy Furniture?
- 12          A.    I worked there for 50 years.
- 13          Q.    50 years?
- 14          A.    50 years.
- 15          Q.    All right. Were you still working for them some in
- 16 July of last year?
- 17          A.    Last year?
- 18          Q.    Yes, sir; the day that the killings occurred?
- 19          A.    Uh, part time.
- 20          Q.    All right. And how long had you been part time at
- 21 that time?
- 22          A.    Since '85, 1985.
- 23          Q.    All right, Mr. Jones, I want to direct your attention
- 24 back to the morning of the killings, July the 16th, 1996.
- 25          A.    Yes, sir.
- 26          Q.    Do you remember that morning?
- 27          A.    Yes, sir.
- 28          Q.    Had you talked with Ms. Tardy that morning?
- 29          A.    Yes, sir. I did.

1 Q. About what time did you talk to her?

2 A. It was some time after 9 o'clock. It was a few  
3 minutes after 9 o'clock.

4 Q. All right, and what was the nature of that phone  
5 call?

6 A. She had talked to me the night before about coming  
7 down and showing-- see, I work part time for them, and she  
8 wanted me to come down and show the new fellow that she had  
9 working for them how to load a truck and then go with them and  
10 show them how to unload.

11 Q. And who were these two new fellows that she had  
12 working?

13 A. One of them was Robert Golden, and the other one was  
14 BoBo Stewart. That is not his-- everybody called him BoBo.

15 Q. All right, Derrick Stewart?

16 A. Yes, sir. That's right.

17 Q. Everybody knew him as BoBo; is that right?

18 A. Yes, sir.

19 Q. And BoBo was a young white boy?

20 A. Yes, sir. That was the young white boy.

21 Q. And Robert was the young black boy that was at the  
22 store?

23 A. Yes, sir.

24 Q. And do you know how many days each of them had been  
25 working?

26 A. Now, I think that, I think they had been there about  
27 a day or two days apiece, a day or either two days. I'm not  
28 for sure on that, but it was about a day or two days each.

29 Q. All right, I believe you even helped hire Robert; is

1 that right?

2 A. I did; yes, sir.

3 Q. Now--

4 A. --the fact--

5 Q. --about what time did you show up at the store to  
6 help them or to show them how to load furniture?

7 A. It was approximately 9:30.

8 Q. All right, was that the time you got to the store or  
9 the time you left your house?

10 A. Oh. I left my house around 9:30. I left my house  
11 around 9:30 and went on my way to the store, and I imagine it  
12 took me around 10 or 15 minutes to get down there.

13 Q. Mr. Jones, when you got to the store, what door of  
14 the store did you go to?

15 A. To the front.

16 Q. All right, and there have been some--

17 BY MR. EVANS: Your Honor, may I have just a  
18 moment?

19 (Mr. Evans sets up slides in projector.)

20 BY MR. EVANS: Your Honor, may we have the  
21 lights dimmed just a little bit?

22 (Lights inside rail were cut off.)

23 BY MR. BILLY GILMORE: Your Honor, we want to  
24 offer a continuing objection to offering slides after  
25 he has offered the pictures into evidence.

26 BY THE COURT: Overruled.

27 BY MR. EVANS:

28 Q. Mr. Jones, can you see the slide that has been marked  
29 as Exhibit 1A that I'm showing you on the wall?

- 1           A.    The one you are showing now?
- 2           Q.    Yes, sir.
- 3           A.    Yes, sir. I can see it.
- 4           Q.    Is that the same Tardy Furniture that you went to to
- 5 show the two young boys how to load the furniture?
- 6           A.    Yes. That's it.
- 7           Q.    And do you see the door in that photograph that you
- 8 went in?
- 9           A.    Yes.
- 10          Q.    Can you describe where it is for me?
- 11          A.    Describe what now?
- 12          Q.    Where the door is on there?
- 13          A.    Oh, yes, sir. It's, from here you walk between the
- 14 police car and the van sitting there, and you go right straight
- 15 to it. You see the line--
- 16          Q.    All right, Mr. Jones, I'm going to shine a marker up
- 17 there on that.
- 18          A.    Yes, sir.
- 19          Q.    Is where I'm shining the laser marker, is that the
- 20 door that you went in?
- 21          A.    That's the door I went in; yes.
- 22          Q.    All right. I show you slide 2A and ask you what that
- 23 slide shows?
- 24          A.    Slide 2A shows the, that's the south end of the
- 25 window of the store and the Winona Cleaners, dry cleaners.
- 26          Q.    Hold on just a second, Mr. Jones. What is this
- 27 building right here?
- 28          A.    That's the Winona Dry Cleaning Company.
- 29          Q.    All right, and what is this building across from the

1 dry cleaners?

2 A. That's the, that health service.

3 Q. Home Health Service?

4 A. Home Health Service.

5 Q. All right. If you would, continue. When you got to  
6 the store, what did you do?

7 A. Say when I got to the store?

8 Q. Yes, sir.

9 A. Well, I parked my truck.

10 Q. And where did you park?

11 A. (No immediate response).

12 Q. Can you see the area that you parked--

13 A. --it was in the, in the center.

14 Q. All right, sir. I don't know if this -- all right,  
15 go ahead. After you parked your vehicle, what did you do?

16 A. I got out. I locked it and got out and walked down  
17 to the store at an angle and walked in.

18 Q. Did you see anybody when you walked in the store?

19 A. When I first walked in, I didn't.

20 Q. And what was the first thing that you noticed once  
21 you started going through the store?

22 A. Well, I walked down about halfway of the store, and I  
23 didn't see nobody. I made about two or three steps further,  
24 and I heard this noise like somebody trying to get their  
25 breath.

26 Q. Could you tell where that noise was coming from?

27 A. I couldn't tell where it was coming from right then  
28 because I was looking up. If I had been looking down, I  
29 probably would have seen it, but I was looking up over the

1 furniture. I was looking for them to be standing up, but they  
2 wasn't.

3 Q. All right, Mr. Jones, can you kind of describe where  
4 in the store? There is a counter in the store that has a cash  
5 register in it; is that correct?

6 A. Say again; beg your pardon?

7 Q. Is there a counter in the store, a counter that folks  
8 sit behind?

9 A. Yes. It's a counter.

10 Q. Where is that located in the store?

11 A. It was located at that time right in the center of  
12 the store just about middleways of the store.

13 Q. All right. Had you walked back that far when you  
14 heard the noise?

15 A. No, sir. I hadn't got back that far when I first  
16 heard it.

17 Q. All right. After you heard the noise that sounded  
18 like somebody, what was the next thing you heard or saw?

19 A. The next thing I did what now?

20 Q. That you heard or saw.

21 A. Oh, everything got quiet then. I didn't hear  
22 nothing. And I walked on a little further, and I heard it  
23 again, and at that time I looked down, and I saw what it was  
24 then.

25 Q. What did you see?

26 A. I saw BoBo's head was just about that far out in the  
27 aisle. (Witness indicating with his hands.) He was in-- see,  
28 the counter was made just like this right here. And BoBo's  
29 head, BoBo was laying right side of the counter, his head about

1 that far out in the aisle.

2 Q. And are we talking about an aisle that goes all the  
3 way down from the door down toward the counter?

4 A. Yes, sir. You see, it was an aisle coming down side  
5 of it, come all the way from the front door and go down the  
6 side of the counter all the way to the back, back to the  
7 offices there. It's three offices back there.

8 Q. All right.

9 A. And it goes all the way back to the offices. But now  
10 it's another aisle right in front of the counter that the  
11 counter is here, and it's another aisle go right in front of it  
12 with a sofa laying, sitting right across there. Oh, it's about  
13 that wide, I guess. (Indicating).

14 Q. Okay, when you looked down, who did you first see?

15 A. BoBo.

16 Q. And was he the one that was making the noises?

17 A. Yes, sir. He was the one that was making the noise.

18 Q. Can you describe the noises that he was making?

19 A. He was making a noise there. You know how somebody--

20 (NOTE: Witness takes two deep breaths.)

21 Q. All right. At that point could you tell whether he  
22 was dead or alive?

23 A. Well, I would say he was alive.

24 Q. All right.

25 A. But he--

26 Q. --Did you see any wounds to him at that time?

27 A. Sir?

28 Q. Did you see any type of wounds to him at that time?

29 A. Wounds?

1 Q. Yes, sir.

2 A. Yes, sir. His head was kind of, the head was bruised  
3 up or tore up, up across there, and that's where the blood was  
4 coming out. Every time he would breathe, blood would come out,  
5 shoot out.

6 Q. All right. What else did you notice after you saw  
7 BoBo laying in the floor breathing in blood?

8 A. Well, the next thing I noticed was Robert and then  
9 Ms. Rigby.

10 Q. Where was Robert?

11 A. Robert was at the other end of the counter. Now BoBo  
12 was at the end coming in laying right in front of the counter  
13 with his head out in the aisle, and Robert was over on the  
14 other side of the counter where they sign in.

15 Q. Did you look at Robert?

16 A. Yes, sir. I looked at him.

17 Q. Did he appear to be dead or alive at that time?

18 A. He appeared to be dead.

19 Q. Did you see anyone else laying in there?

20 A. Ms. Rigby.

21 Q. Where was she?

22 A. She was laying right behind me across in front of the  
23 sofa that is in there.

24 Q. All right. And can you describe how she was laying?

25 A. She was laying face down, and her right hand was out  
26 in front of her. Left hand was behind her; car keys wrapped  
27 around her little finger.

28 Q. Had you ever seen that set of keys before?

29 A. Yes, sir. I have seen them.



1           Q.   Were you able to tell or did you have, could you tell  
2 whether she was dead or alive by looking at her?

3           A.   She appeared to be dead.

4           Q.   Did you notice-- going back to Robert a minute; did  
5 you notice any wounds to Robert?

6           A.   Any wounds?

7           Q.   Yes, sir.

8           A.   I saw a little blood running down one side of his  
9 nose. Yes, sir, just a little bit.

10          Q.   All right. And how about Carmen Rigby; did you  
11 notice any wounds to her?

12          A.   I didn't see no blood or bruise on her.

13          Q.   All right, these three people that you have described  
14 so far: BoBo Stewart, Robert Golden and Carmen Rigby, were  
15 they close together or far apart?

16          A.   They was close together. One was at one end of the  
17 counter, and I guess they, BoBo and Robert was about six or  
18 eight feet apart. It wasn't that far. BoBo was at one end of  
19 the counter, and Robert was at the other, and Ms. Rigby was  
20 laying right behind them. In other words, I was standing right  
21 in the middle of all three of them.

22          Q.   All right, once you noticed these three people laying  
23 there, did you notice anybody else in the store?

24          A.   I didn't right at that second because I run back to  
25 see about BoBo. And I was fixing to get help for him, and I  
26 looked at him one more time, and just as I raised up, well, I  
27 saw Mrs. Tardy laying in the aisle.

28          Q.   You say in the aisle; was she toward the front of the  
29 store or toward--

1           A.   Toward the back, going towards the office.

2           Q.   And were you able to tell whether she appeared to be  
3 dead or alive?

4           A.   She looked to be dead, but I couldn't tell. Of  
5 course, I didn't go back there.

6           Q.   All right. (Changes slides) Mr. Jones, I'm going to  
7 show you Exhibit 15A and ask you if you can identify this for  
8 me?

9           A.   That looks like Mrs. Tardy.

10          Q.   Is that the way she appeared when you saw her laying  
11 in the store?

12          A.   From what I could see of her. Well, I could see the  
13 whole body, but I couldn't see her head up there, but it looks,  
14 that looks about like she was laying when I saw her.

15          Q.   Can you describe the direction that she was laying  
16 from where you saw her?

17          A.   Yes, sir. She was laying with her head was going,  
18 going to the west of the store. In other words, she was going  
19 west in the store going towards her office, it looked like.

20          Q.   And the office was in the back of the store?

21          A.   Office was in the, it's in the-- yes, in the back of  
22 the store.

23          Q.   What was closest to where you were standing, her feet  
24 or her head?

25          A.   Sir?

26          Q.   What was closest to where you were standing, her feet  
27 or her head?

28          A.   Her feet.

29          Q.   All right.

1           A.    But now she was a good piece from me.  She was around  
2 10 or 15 feet from me.  Yes.

3           Q.    Okay.

4           A.    But her feet was the closest.

5           Q.    I will show you Exhibit 17A and ask you if you can  
6 describe what this shows?

7           A.    That is Ms. Rigby.

8           Q.    All right, hold on just a minute.  Where is Ms. Rigby  
9 in that photograph?

10          A.    Right over next to the sofa, right there.

11          Q.    This is her right there?

12          A.    Yes.

13          Q.    And is this the keys that you were talking about?

14          A.    Sir?

15          Q.    Is this the keys right here--

16          A.    --Yes--

17          Q.    --that you were talking about?

18          A.    Yes, sir.

19          Q.    And where is Robert Golden?

20          A.    That's Robert at the other end of the counter.

21          Q.    Right here?

22          A.    Right there.

23          Q.    And where was BoBo Stewart laying?

24          A.    Over on, over on this side right there.

25          Q.    Here where this pool of blood is?

26          A.    Yes, right there where his cap is.

27          Q.    This was BoBo's cap?

28          A.    Yes, right.

29          Q.    And this counter, is this side of it the side that is

1 closest to the front of the store?

2 A. Yes, that faces the front.

3 Q. And which direction from here was Ms. Tardy laying?

4 A. She was laying. She was right there where his hat is  
5 -- in other words, she was headed laying west of where he is.

6 Q. That would be back this direction?

7 A. Yes. That's right. That's right.

8 Q. All right. Did you see any type of tracks in the  
9 store while you were in there?

10 A. When I was in there?

11 Q. Yes, sir.

12 A. No, sir. I didn't.

13 Q. The first time you were in there you didn't see any?

14 A. I didn't see none.

15 Q. All right. What did you do after you saw all these  
16 bodies laying in the floor?

17 A. Well, after I saw them, well, after I figured out I  
18 wasn't dreaming, well, I run to get help for BoBo.

19 Q. And where did you go to get help?

20 A. I went up to Coast to Coast.

21 Q. And where is Coast to Coast located from Tardy  
22 Furniture?

23 A. It is located three doors and an alley north of Tardy  
24 Furniture Company.

25 Q. And was that the closest open business to the store?

26 A. Well, now the pressing shop might have been a little  
27 over closer, but I just had it in my head, Coast to Coast in  
28 mind and I went up there.

29 Q. All right, sir. And what did you do when you got to

1 Coast to Coast?

2 A. Well, I went in and told the lady; she asked me if  
3 she could help me, and I told her what had happened and asked  
4 her to call the police and an ambulance, and she asked me what  
5 had happened down at Tardy Furniture Company, and I told her  
6 what had happened, and she said, or she went on and called  
7 them.

8 Q. All right. And what did you do after she called for  
9 help?

10 A. I went on back down there to the front of the store  
11 and waited until the police come, and then we went back in  
12 there after he got there.

13 Q. After you went back in the store with the police, did  
14 you see any tracks in the store at that time?

15 A. When we went back in there, I did.

16 Q. Where was the tracks that you saw?

17 A. They was coming through that puddle of blood.

18 Q. All right, I'm going to back back up again. (Shows  
19 another slide.) Do you see the puddle of blood that the tracks  
20 were coming from?

21 A. Yes, sir. There it is right there by BoBo's cap.

22 Q. So are we talking about the puddle of blood that BoBo  
23 was laying in?

24 A. Yes, sir.

25 Q. And there was some bloody tracks that led away from  
26 there; is that correct?

27 A. Yes, sir.

28 Q. All right.

29 A. Put that thing back on his cap.

- 1 Q. On the cap?
- 2 A. Yes. Carry it back towards the other way. Right
- 3 there.
- 4 Q. Okay. And that is the blood that you saw the tracks
- 5 coming from--
- 6 A. --That is the blood and the track there.
- 7 Q. All right. Did you and anyone talk about the tracks
- 8 there?
- 9 A. Say he didn't want to talk about it?
- 10 Q. Did you and anyone else talk about the tracks?
- 11 A. No, sir.
- 12 Q. Did you look at the pattern that the tracks made?
- 13 A. Yes.
- 14 Q. Did you have any shoes on that were anything close to
- 15 that pattern?
- 16 A. No, sir. I didn't.
- 17 Q. All right. You had worked off and on in the store
- 18 for 50 years; is that correct?
- 19 A. Yes, sir. That's right.
- 20 Q. Can you tell us a little bit about the normal
- 21 operating procedure of the store as far as where the money was
- 22 kept?
- 23 A. Well, they usually carried money to the bank in the
- 24 evening, most of it anyway. It might be a little that come in
- 25 after banking hours.
- 26 Q. All right.
- 27 A. But they usually carried the money to the bank.
- 28 Q. Do you know where they kept the money to open up
- 29 with?

1           A.    In the safe.

2           Q.    All right.

3           A.    Back in the office.

4           Q.    And who would normally be the person that got the  
5 money out of the safe to open up with in the mornings and put  
6 it in the cash register?

7           A.    It would be Ms. Rigby or either Ms. Tardy.

8           Q.    And where was the cash register located that the  
9 opening up money was kept in?

10          A.    It was located right under the counter.

11          Q.    Now are we talking about right under this counter  
12 here? (Pointing on slide)

13          A.    Yes.

14          Q.    Right on the opposite side?

15          A.    Back a little. It was right along in there on the  
16 other side.

17          Q.    Okay.

18          A.    It's a drawer under there.

19          Q.    A drawer?

20          A.    Yes. It's a drawer, cash drawer there. It is made  
21 in the top of the counter.

22                   BY MR. EVANS: All right. May I have the  
23 Court's indulgence just a moment?

24                   BY THE COURT: Yes, sir.

25                   (Mr. Evans confers with Mr. Horan and then hands  
26 photograph to Mr. Gilmore.)

27                   BY THE COURT: Are you ready for the lights to  
28 go back on?

29                   BY MR. EVANS: He might can see well enough with

1                   this without them, Your Honor. It might save a  
2                   little time.

3                   BY THE COURT: All right, sir.

4 BY MR. EVANS:

5           Q. Mr. Jones, I want to hand you Exhibit 11 and ask you  
6 to look--

7                   BY MR. BILLY GILMORE: --Your Honor, could we  
8 ask that the picture be removed from the wall if he  
9 is going to another exhibit?

10                  BY MR. EVANS: I don't have any problem with  
11 that.

12                   (View of slide removed from wall.)

13 BY MR. EVANS:

14           Q. That is Exhibit 11, Mr. Jones. I want you to look at  
15 that and see if you can tell what it shows?

16           A. (Pause).

17                  BY THE COURT: Let's turn the lights back on.  
18 We can turn them back off when we get another  
19 exhibit.

20 BY MR. EVANS:

21           Q. Can you see the picture all right, Mr. Jones?

22           A. Yes, sir. You say see if I can see what on there?

23           Q. See if you can identify what that picture shows. Is  
24 that something that you saw there that morning?

25           A. (No response).

26           Q. Specifically, is that Ms. Tardy laying in that  
27 photograph?

28                  BY MR. BILLY GILMORE: Your Honor, I object to  
29 leading.



1 BY THE WITNESS: Well, it's--

2 BY THE COURT: --Overruled.

3 BY THE WITNESS:

4 A. That's about-- (Pause) It looks like where she was  
5 laying.

6 Q. All right, does that picture truly and accurately--  
7 is that the store?

8 A. Say is this the store?

9 Q. Yes, sir. Is that the inside of the store?

10 A. Yes, sir. It's inside the store.

11 Q. All right. Does that picture show her laying down  
12 the aisle as you saw her?

13 A. Yes, sir. That's right.

14 BY MR. EVANS: Your Honor, I offer Exhibit 11  
15 into evidence.

16 BY THE WITNESS: That's it; that's it.

17 BY MR. EVANS:

18 Q. I will also ask you to look at this slide in this  
19 view projector that is Exhibit 11A, and just tell me if that  
20 slide shows the same thing that the picture in Exhibit 11  
21 shows?

22 A. Yes, sir. It shows the same thing. It's a little  
23 clearer on this slide than it is right here because you can see  
24 some blood right at this edge of it right here.

25 BY MR. EVANS: All right. Your Honor, at this  
26 point I offer 11 and 11A into evidence.

27 BY THE COURT: Any objection?

28 BY MR. BILLY GILMORE: No objection.

29 BY THE COURT: Let them be marked.

1 (PHOTOGRAPH AND CORRESPONDING SLIDE PREVIOUSLY  
2 MARKED AS STATE'S EXHIBITS S-11 AND S-11A FOR  
3 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

4 (Mr. Evans puts slide S-11A in the projector and  
5 shows it on the wall.)

6 BY MR. EVANS:

7 Q. All right, Mr. Jones, the photograph or slide 11A,  
8 does that slide look more like you saw Ms. Tardy as you were  
9 standing there by the other bodies?

10 A. Yes.

11 Q. And who is this laying in the middle of the aisle  
12 right here?

13 A. That is her right there.

14 Q. Ms. Bertha Tardy?

15 A. Yes.

16 Q. And this cap that is laying right here in the blood,  
17 is that the same cap that you identified as being BoBo's cap?

18 A. Yes. That's right. Yes.

19 Q. For the jury's benefit, this is the same counter  
20 right here that the other bodies were in front of; is that  
21 right?

22 A. Yes.

23 BY MR. EVANS: Your Honor, I will tender the  
24 witness.

25 BY THE COURT: You can turn the lights back on.

26 BY THE BAILIFF: You want them on?

27 BY THE COURT: Yes, sir.

28 BY THE BAILIFF: It'll take them a little bit to  
29 come back right.

1 BY THE COURT: Okay.

2 CROSS-EXAMINATION BY MR. BILLY GILMORE:

3 Q. Mr. Jones, I believe you said Ms. Tardy had called  
4 you the night before about coming up and helping the next day?

5 A. Yes. That's right.

6 Q. And did you tell her you would come?

7 A. I told her I was coming.

8 Q. Okay, and then she called you again the next morning?

9 A. She called me the next morning to confirm it, to see  
10 if I--

11 Q. --to confirm--

12 A. --yes, sir, to make sure that I was coming down  
13 there.

14 Q. All right, what time did she call you?

15 A. It was sometime after, after 9 o'clock.

16 Q. Do you know about when after 9:00?

17 A. It was about, I would say around maybe 10 minutes or  
18 something like that after 9:00.

19 Q. All right, sir. Now how far do you live from Tardy's  
20 Furniture? How many city blocks or how many miles?

21 A. One way is nine tenths of a mile, and the other way  
22 is about a mile and two tenths. If I go straight down Campbell  
23 Street, it is nine tenths of a mile from my house to where I  
24 park at the back of the store. And if I go the other way, it's  
25 a little bit further.

26 Q. Okay, so which way did you go that morning?

27 A. I went the long way. I went up Applegate to Summit,  
28 turned at the red light because I figured it was quicker, you  
29 see. I could-- when I pull out on Campbell-- pull out on

1 Applegate there, I can see the red light, and because of the  
2 way the red light be sitting, if it's on red and no cars up  
3 there, well, I will go that way because I know it's going to  
4 change by the time I get there. And if it's on green and no  
5 cars there, I go that way, and I can pull on up there, and I  
6 make one stop and take off. I can turn on red after I stop.

7 Q. So that-- is that Summit Street?

8 A. It's Summit.

9 Q. Now that is the main street that goes downtown off of  
10 Highway 51?

11 A. Yes.

12 Q. And it's how many red lights in Winona on 51?

13 A. On 51?

14 Q. Yes, sir.

15 A. It has got two.

16 Q. Two. And this is the one that is right downtown as  
17 you turn going to town?

18 A. It's one turning to go down in town there.

19 Q. All right, sir. So that is about a mile and two  
20 tenths going that direction?

21 A. Yes.

22 Q. All right, did you stop along the way before you got  
23 to the store?

24 A. Yes, sir.

25 Q. Where did you stop?

26 A. I stopped at Coast to Coast.

27 Q. The front or the back?

28 A. At the back. See what I did, I went down to the,  
29 come down to the post office and turned right on Church Street;

1       went down to Carrollton and come in back of the store. I was  
2       intending to go on the parking lot, but since I was going, had  
3       to go to Coast to Coast, well, I turned and went up the alley  
4       there; turned off of Carrollton and went up the alley.

5           Q.    Do you know the name of that little alley street?

6           A.    I forget the name of that little alley.

7           Q.    It's just a little narrow street behind the main  
8       stores--

9           A.    --It's a little narrow street, yes. It's a little  
10       narrow street there. It runs from Carrollton up to, they call  
11       it Keyneck or something up there. It runs down between Coast  
12       to Coast and that vacant store up there.

13          Q.    All right. Now did you go, actually go in to Coast  
14       to Coast, or did you go to the repair shop across the alley--

15          A.    --I went to the repair shop--

16          Q.    --that belonged to Coast to Coast?

17          A.    I went to the repair shop there.

18          Q.    And that is part of Coast to Coast?

19          A.    Yes. It belonged to Coast to Coast.

20          Q.    Okay. Now isn't it true there is also an alley that  
21       goes east and west right there at that, that intersects right  
22       there at Coast to Coast?

23          A.    Yes.

24          Q.    And the alley goes by Coast to Coast and comes back  
25       out on Front Street?

26          A.    Yes, sir.

27          Q.    And also back, goes back to the west past Dr.  
28       Middleton's office?

29          A.    Yes, sir.

1 Q. Okay. Now how long did you stop there and talk to  
2 whoever it was there?

3 A. Oh, just a second, just a little bit. I wasn't there  
4 ten minutes.

5 Q. Okay, did you get out of your car?

6 A. No, sir. I didn't get out. I don't think I-- no,  
7 sir. I didn't get out.

8 Q. You just talked to somebody out the window?

9 A. Yes. I just-- he was in the alley there, and I  
10 talked to him there.

11 Q. Was the guy there that you were looking for?

12 A. The one I was looking for wasn't there, and he told  
13 me, the one I talked to told me, said he will be back in a few  
14 minutes; said why don't you just get out and wait. I said, no,  
15 I'm going down there first, and I will come back when I get  
16 through down there, and then I left.

17 Q. So when you left the repair shop behind Coast to  
18 Coast, which direction did you go? Did you go through the  
19 alley to the east or you go back up to the north to the main  
20 street?

21 A. I pulled up to the alley and went to the east and  
22 pulled out on--

23 Q. --okay, pulled out on Front Street?

24 A. On Front Street, yes.

25 Q. Okay. And that would be the alley between Coast to  
26 Coast and Tardy's Furniture?

27 A. Yes, sir. That antique place and Tardy Furniture  
28 Company.

29 Q. Okay, and I believe there is a vacant building or two

1 on the right there?

2 A. Yes, sir.

3 Q. Okay. So when you got down, when you got out on main  
4 street, did you park out in the center, or did you park at the  
5 curb on either side of the main street?

6 A. I parked in the center to the second tree. You know,  
7 the trees in the center of the street?

8 Q. Yes, sir.

9 A. I went to the second one because it has a little more  
10 room on that one than it is the rest of them. See, they spaced  
11 one over here and then one over there, and I parked in the one  
12 that had the deepest slot in it. I parked right there which  
13 was a little up above the store. I walked from my truck down  
14 to the store, went kind of at an angle.

15 Q. All right, sir. In other words, you go down, you go  
16 south. You are in front of the stores, and if you go back  
17 north, you would be over toward the railroad?

18 A. Yes.

19 Q. And then in the center there is some trees planted  
20 there and some center parking?

21 A. Yes, that's right.

22 Q. Okay.

23 A. Yes.

24 Q. And you were parked out in the center where those  
25 trees were planted?

26 A. Yes.

27 Q. All right. And you got out of your car and went to  
28 the store?

29 A. Yes.

1 Q. And the door was unlocked?

2 A. Yes. It was unlocked.

3 Q. What was, what cars did you see out front when you  
4 first got there?

5 A. I tell you the truth; I don't remember seeing no  
6 car. I don't remember seeing no car out there.

7 Q. All right, sir. Now you went inside, and I'm not  
8 going into all the details of what you have just described, but  
9 you went inside, and you discovered the bodies?

10 A. Yes.

11 Q. Okay. Now did you say that you did not see a track  
12 the first time you was in there?

13 A. No, sir. I didn't see, when I first went in there, I  
14 didn't see a track. If I did, I didn't pay it no attention,  
15 but I didn't see no track the first time I went in there. Of  
16 course, when I got in there, when I saw the bodies, I  
17 discovered the bodies before I got close enough to look for a  
18 track. In fact, I wasn't looking for it when I saw it. But  
19 after I saw all these bodies in here, I didn't think about no  
20 track. I was looking at them. My mind was on them and what  
21 had happened, wondering what had happened.

22 Q. Do you know how long you stayed in the store?

23 A. I don't know, sir. I stayed in there long enough  
24 to-- I looked at all of them. I looked at BoBo first, and then  
25 I looked at, went around and looked at the other two. And then  
26 I went, turned back to BoBo and looked at him, and that's when  
27 I looked up to go get help because I knew the rest of them were  
28 dead. And that's when I raised up to go get help, and as I  
29 raised up, I saw Mrs. Tardy laying in the alley-- in the aisle



1 way back there. I hadn't seen her at that--

2 Q. Well, could you give me your best estimate how long  
3 you think you were inside the store the first time?

4 A. Oh, maybe, eight or ten, not over ten minutes.

5 Q. Eight to ten minutes?

6 A. Yes.

7 Q. All right. And how far did you have to go to get  
8 someone to call?

9 A. Well, like I said, I had to go, it was three-- it's  
10 two doors and an alley up the street, you know.

11 Q. In other words, Tardy's front door is the middle of  
12 that block?

13 A. Yes. It's about middleways of that-- well, it is  
14 middleways of that block.

15 Q. All right, and then the Coast to Coast is on the next  
16 block, and it's the first store you get to?

17 A. It's the first store on the next block, and then  
18 there is two stores in between there - old Liberty Cash and  
19 then the old Tardy Furniture Company is sitting in there  
20 between it.

21 Q. All right, sir. How long do you think it took you  
22 when you left the store to get up to Coast to Coast  
23 approximately?

24 A. It didn't take me over-- well, after I got out,  
25 headed-- well, it didn't take me over five or six minutes.

26 Q. Five or six minutes?

27 A. Yes.

28 Q. Okay. Then you went in Coast to Coast and asked them  
29 to get some help?

1           A.    Yes, sir. I went back about halfway of Coast to  
2 Coast, and I told the lady and she got help for me.

3           Q.    Do you know anything else about this case, Mr. Jones?

4           A.    Anything else about it?

5           Q.    Yes, sir.

6           A.    No, sir.

7           Q.    Do you know Doyle Simpson?

8           A.    Say do I know him?

9           Q.    Yes, sir.

10          A.    Yes, sir. I know him.

11          Q.    Had he ever worked at Tardy's?

12          A.    Yes, sir. He worked there.

13          Q.    Do you know how long he worked there?

14          A.    Doyle worked there, I don't know. Doyle worked  
15 there, I can't tell you exactly how long, but I would say he  
16 worked there off and on-- he never was regularly-- we used him  
17 extra because he was working in there when I was there. He had  
18 been around there, working around there. Whenever we needed  
19 extra help, we would always pick up Doyle, and that was back  
20 before I retired. He had been there around two or three years  
21 maybe.

22          Q.    Okay. Now at the time you retired, were they using  
23 him part time then?

24          A.    At the time, yes, sir. They was using him part time.

25          Q.    And what time, when did you retire?

26          A.    I retired in, I forgot the month. It was in '85.

27          Q.    Okay, so--

28          A.    I never did, I partially retired in '85 is when I  
29 left. I partially retired in '85, but I worked on part time

1 after then.

2 Q. Okay, you worked on part time up until what, last  
3 year?

4 A. Up until this happened.

5 Q. Okay.

6 A. See, I taken care of all her repairs and stuff like  
7 that and help them on deliveries.

8 Q. All right, sir. But now Doyle Simpson had worked  
9 up-- did he work after you retired any, or do you know?

10 A. I don't know, sir, whether he did or not.

11 Q. After you retired, did they hire someone to take your  
12 place?

13 A. Uh, yes, sir. Yes, sir; she hired somebody. I think  
14 Doyle and uh, I believe that Ray Weems come in down there; I'm  
15 not for sure on it.

16 Q. Ray Weems?

17 A. But I would go back and help them.

18 Q. Is that the same as David Weems?

19 A. Sir?

20 Q. Is that David Weems?

21 A. David's brother.

22 Q. David's brother, Ray Weems.

23 A. Yes.

24 Q. Okay, so Ray Weems and Doyle Simpson were both  
25 working there part time?

26 A. Yes, sir. They worked there part-- now Ray used to  
27 work there full time, but he had a job. I think he was working  
28 at one of the factories up--

29 BY MR. EVANS: --Your Honor, I'm trying not to,

1 but I'm going to have to object on relevancy to what  
2 went on in 1985 unless he can show some connection  
3 with this case.

4 BY MR. BILLY GILMORE: Your Honor, we intend to  
5 link it up with future witnesses.

6 BY THE COURT: What happened in 1985.

7 BY MR. BILLY GILMORE: No, sir. What happened  
8 on July the 16th, 1996.

9 BY THE COURT: Okay, well, let's get to that  
10 date then and get off 1985.

11 BY MR. BILLY GILMORE: All right, sir.

12 BY MR. BILLY GILMORE:

13 Q. But even on July 16th of 1996, you considered  
14 yourself working part time for Tardy's Furniture?

15 A. Yes.

16 BY MR. BILLY GILMORE: Tender the witness.

17 BY MR. EVANS: No further questions of this  
18 witness, Your Honor.

19 BY THE COURT: Okay. Ladies and gentlemen of  
20 the jury, we are going to take about a ten minute  
21 break right now, long enough for you to get coffee or  
22 whatever. Y'all get that done and we will come  
23 back.

24 (COUNSEL APPROACHED THE BENCH AS THE JURY WAS  
25 GOING OUT FOR THE RECESS, AND THE FOLLOWING WAS HAD  
26 AT THE BENCH OUT OF THE HEARING OF THE JURY:)

27 BY MR. BILLY GILMORE: We want him subject to  
28 recall at a later time.

29 BY THE COURT: I didn't release him. (To the

1 witness) You may go back to the room from whence you  
2 came.

3 (FOLLOWING THE MORNING RECESS ON OCTOBER 14,  
4 1997, TESTIMONY CONTINUED IN OPEN COURT WITH ALL COUNSEL,  
5 THE JURY, AND THE DEFENDANT PRESENT AS FOLLOWS:)

6 BY THE COURT: Who do you have next?

7 BY MR. HORAN: Barry Eskridge.

8 BARRY ESKRIDGE,

9 a white male called to testify as a witness by the State of  
10 Mississippi, having first been duly sworn, testified as  
11 follows, to-wit:

12 BY THE COURT: State your name for the record,  
13 please, sir.

14 BY THE WITNESS: Barry Eskridge.

15 DIRECT EXAMINATION BY MR. HORAN:

16 Q. Mr. Eskridge, were you sworn this morning?

17 A. Yes, sir.

18 Q. Thank you. Mr. Eskridge, where do you live?

19 A. Winona, Mississippi.

20 Q. And how are you employed?

21 A. I am the owner of MedStat Ambulance Service.

22 Q. And what do y'all do at MedStat Ambulance Service?

23 A. We provide ambulance services to the City of Winona  
24 and Montgomery County.

25 Q. Are y'all an independent contractor?

26 A. Yes, sir.

27 Q. I want to direct your attention to July the 16th,  
28 1996. Were you working that particular day?

29 A. Yes, sir.

1 Q. Did you have an occasion to be called to a location  
2 in Winona that you knew then and know now as Tardy Furniture?

3 A. Yes, sir.

4 Q. And what position do you-- are you an EMT?

5 A. I am paramedic.

6 Q. Paramedic. Would you tell the Court and the jury  
7 what training and background you have that qualifies you to be  
8 a paramedic?

9 A. Well, I am a graduate from the University of  
10 Mississippi Medical Center in Jackson as a certified emergency  
11 medical technician paramedic.

12 Q. And you were called to the scene. Do you remember  
13 about what time you got there?

14 A. It was, I think about 10:20, 10:24, somewhere in that  
15 neighborhood.

16 Q. And would you tell the Court and the jury what you  
17 did when you arrived at the scene?

18 A. Well, I was not the primary ambulance attendant. I  
19 have an ambulance crew that is on duty that responded as the  
20 primary unit. I came in with them. They arrived maybe a  
21 minute ahead of me. When I arrived, they had already entered  
22 the store, and the driver was coming down back out of the store  
23 to retrieve the stretcher to go back in, and I helped him with  
24 the stretcher and then went into the store where I found--

25 Q. --For what purpose did your service take a stretcher  
26 into the Tardy Furniture?

27 A. We had a victim that was still alive that we were  
28 transporting to the hospital.

29 Q. Was that an individual that you knew then or may not

1 have, but you came to know as Derrick "BoBo" Stewart?

2 A. Yes, sir.

3 Q. Did you assist your employees there, other employees  
4 there in rendering him medical attention?

5 A. Yes, sir; I did.

6 Q. What did you do?

7 A. Assisted the paramedic and the driver with preparing  
8 him to be moved to the stretcher and then taking him to the  
9 ambulance.

10 Q. Was he conscious?

11 A. No, he was not.

12 Q. Would you tell the Court and the jury his condition  
13 at the time that y'all began rendering assistance to him?

14 A. He was lying face down in a pool of blood around his  
15 face. He was breathing, had a pulse; was not responsive at  
16 all.

17 BY MR. BILLY GILMORE: I'm going to object.  
18 This testimony is irrelevant and immaterial to this  
19 particular case.

20 BY MR. HORAN: Your Honor, it is part of the  
21 scene, what they did to render assistance to Mr. BoBo  
22 and his condition at the time that they arrived. I  
23 think it is certainly probative to show his  
24 condition.

25 BY MR. BILLY GILMORE: This is a charge  
26 involving Ms. Tardy.

27 BY MR. HORAN: This is an individual found at  
28 the scene, Your Honor.

29 BY THE COURT: Okay, but I think you have

1 explored that. Move on.

2 BY MR. HORAN: Yes, Your Honor.

3 BY MR. HORAN:

4 Q. Did you notice anything about the general area around  
5 Mr. Stewart when you arrived?

6 A. There was a large pool of blood around his head and  
7 upper torso area. I also noticed that there were, a couple of  
8 feet from him were one or two unspent bullets and a footprint  
9 that appeared to be made in blood.

10 Q. At the time that you noticed that footprint, did you  
11 take steps to make sure that any of your personnel did not make  
12 those prints?

13 A. Yes, I did.

14 Q. What did you do?

15 A. I identified the print to them. The Police Chief was  
16 sitting there with us as well as my personnel, and I pointed  
17 out the footprint, and I instructed them to be sure not to go  
18 anywhere near the footprint or those shells that were laying on  
19 the floor.

20 Q. Any of your personnel have any blood on their shoes,  
21 or did you check their shoes?

22 A. Yes, I did.

23 Q. Were you satisfied that the print was not made by any  
24 of your people?

25 A. Yes, sir. I did.

26 Q. Did you check any of the other individuals in the  
27 store?

28 A. No.

29 Q. What did y'all do with Mr. Stewart?



1 A. We took him--

2 BY MR. BILLY GILMORE: --Your Honor, I object.  
3 Same, irrelevant and immaterial--

4 BY MR. HORAN: --He stated they took him to the  
5 hospital, Your Honor. I don't see how that would be  
6 prejudicial.

7 BY THE COURT: Overruled.

8 BY MR. HORAN:

9 Q. What did y'all do with Mr. Stewart after y'all left  
10 Tardy Furniture?

11 A. I assisted the ambulance crew taking him to the  
12 ambulance, and they left and I stayed there with Chief  
13 Hargrove.

14 BY MR. HORAN: Court will indulge me for a  
15 moment.

16 (Mr. Horan and Mr. Evans confer briefly.)

17 BY MR. HORAN:

18 Q. Did you check the condition of the other three people  
19 present in the store?

20 A. Yes, sir; I did.

21 Q. What was their condition?

22 A. They were deceased.

23 BY MR. HORAN: Tender the witness for cross,  
24 Your Honor.

25 CROSS-EXAMINATION BY MR. BILLY GILMORE:

26 Q. Ms. Eskridge, just one question; do you know who made  
27 the track?

28 A. No, sir; I do not.

29 BY MR. BILLY GILMORE: No further questions.

1 BY THE COURT: I assume no redirect?

2 BY MR. HORAN: No, Your Honor.

3 BY THE COURT: Is he finally excused?

4 BY MR. HORAN: He is, Your Honor, as far as the  
5 State is concerned.

6 BY THE COURT: How about the Defense? Y'all  
7 don't want him kept here, do you?

8 BY MR. BILLY GILMORE: No, Your Honor.

9 BY THE COURT: Mr. Eskridge, you are free to  
10 leave, or you can stay in the courtroom if you would  
11 like.

12 WITNESS EXCUSED.

13 BY THE COURT: Who do you have next?

14 BY MR. HORAN: Eddie Robinson, Jr., also known  
15 as Skeeter Robinson.

16 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
17 THE JURY AS FOLLOWS:)

18 BY THE COURT: This is concerning one witness  
19 that has already testified. Mr. Gilmore has  
20 indicated that he wanted Mr. Jones to remain  
21 available for testimony on behalf of the Defense.  
22 Now we are not going to get to him today, so you are  
23 going to be responsible for telling him when to get  
24 back up here.

25 BY MR. BILLY GILMORE: As long as he remains  
26 under the subpoena, that will be fine.

27 BY MR. EVANS: Well, he is on our subpoena. We  
28 are going to release him.

29 BY THE COURT: You need to subpoena him, and

1 then you need to make arrangements for him to be here  
2 when you need him to testify.

3 BY MR. EVANS: And for the record, the only  
4 reason I say that is I don't want to be responsible  
5 for having him here if they are wanting him.

6 BY THE COURT: Well, what I'm saying is there is  
7 nobody to provide him a place to stay tonight and  
8 everything else, and you need to make arrangements if  
9 you are going--

10 BY MR. BILLY GILMORE: --so you know when--

11 BY THE COURT: --well, it's not going to be  
12 today. When we take a lunch break, y'all tend to  
13 that.

14 END BENCH CONFERENCE.

15 BY THE COURT: Yes, sir.

16 BY THE BAILIFF: He hasn't been sworn yet, Your  
17 Honor.

18 EDDIE ROBINSON, III,  
19 a black male called to testify as a witness by the State of  
20 Mississippi, having first been duly sworn, testified as  
21 follows, to-wit:

22 BY THE COURT: State your name for the record.

23 BY THE WITNESS: Eddie Robinson, III.

24 BY MR. HORAN: May I proceed, Your Honor?

25 BY THE COURT: Yes.

26 DIRECT EXAMINATION BY MR. HORAN:

27 Q. Mr. Robinson, do you hold any official capacity in  
28 Grenada County, Mississippi?

29 A. Yes, sir.

1 Q. And what would that be?

2 A. Deputy Medical Examiner, Grenada County.

3 Q. What qualifies you to be a deputy medical examiner?

4 A. We have to have two weeks of experience every year.

5 We go down to Jackson to the Mississippi Training, Law

6 Enforcement Training Academy, excuse me.

7 Q. And how long have you been deputy medical examiner?

8 A. Nine years.

9 Q. What are your duties and responsibilities as deputy  
10 medical examiner?

11 A. To go to the crime scene of any deaths in our county.

12 Q. And I assume that would include homicides, suicides,  
13 stuff like that?

14 A. Yes, sir.

15 Q. You were not the coroner of Montgomery County where  
16 Winona is located though?

17 A. No, sir. No, sir.

18 Q. Who is that?

19 A. Mr. Carl Oliver. He is the coroner of Montgomery  
20 County.

21 Q. I want to direct your attention to July the 16th,  
22 1996. Were you summonsed to go to Winona for any particular  
23 reason?

24 A. Yes, sir.

25 Q. What was that?

26 A. The Sheriff Department called me, said they needed me  
27 down there to work a crime scene, sir.

28 Q. Why was Mr. Oliver not summonsed to work the crime  
29 scene?

1           A.    He was out of town at the time, sir.

2           Q.    And approximately 11 o'clock did you arrive down  
3 there at the location?

4           A.    Yes, sir.

5                   BY MR. BILLY GILMORE: Your Honor, I'm going to  
6 object to the leading.

7                   BY MR. HORAN: I'm sorry, Your Honor.

8 BY MR. HORAN:

9           Q.    Approximately what time did you arrive?

10          A.    I got on the scene at exactly 10:55, sir.

11          Q.    Thank you. And did you have an occasion to examine  
12 the body of an individual by the name of Bertha Tardy there at  
13 the scene?

14          A.    Yes, sir.

15          Q.    And did you make any findings as to whether or not  
16 Ms. Tardy was alive or not?

17          A.    No, sir. She wasn't alive at the time.

18                   BY MR. BILLY GILMORE: Your Honor, we want to  
19 object. I mean it has been established that the  
20 person was deceased. There is no need in going over  
21 and over it. I think it is redundant, irrelevant and  
22 immaterial as to -- it has already been established  
23 she was deceased.

24                   BY THE COURT: Overruled.

25 BY MR. HORAN:

26          Q.    Was she deceased at the time--

27          A.    Yes, sir.

28          Q.    --that you saw her?

29          A.    Yes, sir.

1 Q. Would you describe any wounds to her person that you  
2 observed?

3 A. Yes, sir. She had a gunshot wound to her head, sir.

4 Q. Was it from a shotgun, or did it appear to be from a  
5 shotgun? A large wound or a small wound?

6 A. Appeared to be from a small one.

7 Q. Pistol or shotgun?

8 A. Pistol, sir.

9 Q. Did you do anything pursuant to the coroner's  
10 Reorganization Act of 1986 at that time?

11 A. Yes, sir.

12 Q. What was that?

13 A. I got on the phone immediately and called the Crime  
14 Lab, sir, got them on their way up to the crime scene.

15 Q. You don't know whether or not they had already been  
16 notified?

17 A. No, sir. I can't tell that, but we notified them. I  
18 notified them again if they hadn't been.

19 Q. You are required to do that by law, I assume?

20 A. Yes, sir.

21 Q. Did you also order that an autopsy be done?

22 A. Yes, sir.

23 Q. And do you know who performed that autopsy?

24 A. Yes, sir.

25 Q. Who is that?

26 A. Dr. Steve Hayne.

27 Q. Where is his office located?

28 A. Rankin County.

29 Q. Okay, did you take possession of the body until the

Cross

1 autopsy could be-- were you in charge of Ms. Tardy's body at  
2 that time?

3 A. Yes, sir.

4 BY MR. HORAN: I tender.

5 CROSS-EXAMINATION BY MR. BILLY GILMORE:

6 Q. Mr. Robinson, you didn't have any official duties in  
7 Montgomery County, did you?

8 A. Official duties?

9 Q. Yes.

10 A. Yes, sir; they called me down there, sir.

11 Q. I know, but you were elected in Grenada County?

12 A. Yes, sir.

13 Q. And you serve Grenada County?

14 A. Yes, sir.

15 Q. And Mr. Oliver serves Montgomery County?

16 A. Yes, sir.

17 BY MR. BILLY GILMORE: Okay, no further  
18 questions.

19 BY THE COURT: Is he finally excused?

20 BY MR. EVANS: Yes, Your Honor.

21 BY MR. BILLY GILMORE: Yes, Your Honor.

22 BY THE COURT: Mr. Robinson, you are free to  
23 leave, or you can stay in the courtroom.

24 BY THE WITNESS: Thank you, sir.

25 WITNESS EXCUSED.

26 BY THE COURT: Who do you have next?

27 BY MR. EVANS: Melissa Schoene.

28 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
29 THE JURY AS FOLLOWS:)

1           BY THE COURT: From now on, just when they go  
2 get witnesses, y'all just approach.

3           BY MR. BILLY GILMORE: Your Honor, we are going  
4 to enter an objection to continuing proof about the  
5 other four bodies. I mean this is supposed to be the  
6 murder trial victim is Bertha Tardy. Yet it seems  
7 that they are dwelling on more of the other victims  
8 than they are on Bertha Tardy. We feel like it is  
9 prejudicial, and they have already established the  
10 crime scene, and I am presuming now they are going to  
11 call experts to start showing the various things  
12 about the other victims.

13           BY MR. HORAN: This is the crime scene.

14           BY THE COURT: I don't know what they are going  
15 to do. I will have to wait and see. Y'all are  
16 going to have to quit objecting until something comes  
17 up.

18           BY MR. BILLY GILMORE: Well, we object to just  
19 the continuing line of questioning.

20           BY THE COURT: Well, continuing objections don't  
21 work. You have got to object when the time comes.

22           BY MR. EVANS: This witness was not here earlier  
23 to be sworn.

24                           END BENCH CONFERENCE.

25           BY THE COURT: Okay.

26                           MELISSA SCHOENE,

27 a white female called to testify as a witness by the State of  
28 Mississippi, having first been duly sworn, testified as  
29 follows, to-wit:



1 BY THE COURT: State your name for the record,  
2 please, ma'am.

3 BY THE WITNESS: My name is Melissa Schoene.  
4 S C H O E N E.

5 BY MR. EVANS: May I proceed, Your Honor?

6 DIRECT EXAMINATION BY MR. EVANS:

7 Q. Ms. Schoene, how are you employed?

8 A. I am currently employed by the Mississippi Crime  
9 Laboratory in Jackson.

10 Q. And how long have you been employed by the  
11 Mississippi Crime Lab?

12 A. For approximately three years.

13 Q. And on July the 16th of 1996, what title did you  
14 hold?

15 A. I was a member of the crime scene response unit. It  
16 was my responsibility to respond to requests of assistance for  
17 law enforcement agencies throughout the State of Mississippi  
18 when they needed assistance documenting and collecting evidence  
19 at crime scenes.

20 Q. Would you tell us a little about your educational  
21 background that assists you in your job?

22 A. Yes, sir. I have earned a Bachelor's Degree in  
23 Criminal Justice with a concentration in criminal and deviant  
24 behavior from the University of Alabama, and also a Master's  
25 Degree in Chemistry from the University of Alabama.

26 Q. And what type of employment background do you have?

27 A. Prior to my employment with the Mississippi Crime  
28 Laboratory, I worked for the Alabama Department of Forensic  
29 Sciences as a technician and also for the Alabama State Medical

1 Examiner's Office also as a technician. I also worked on a  
2 part time basis for the Northport Police Department in  
3 Northport, Alabama, for approximately two years.

4 Q. And also what type of specialized training have you  
5 had that assists you in performing your duties?

6 A. The Mississippi Crime Laboratory has provided me with  
7 the opportunity to obtain over 400 hours of specialized  
8 forensic training in the areas of evidence recognition,  
9 evidence documentation, and evidence collection. Now this  
10 specialized training includes the death investigator's training  
11 course from the St. Louis University School of Medicine, three  
12 different courses on the documentation and preservation of  
13 footwear impression evidence, and three different courses  
14 instructed by former F.B.I. special agents including an  
15 advanced violent crime investigators seminar and a bullet  
16 trajectory crime scene reconstruction school taught at the  
17 F.B.I. Academy in Quantico, Virginia.

18 Q. Do you hold any certifications?

19 A. Yes, sir. I currently hold two certifications. I am  
20 a certified crime scene analyst by the International  
21 Association for Identification, and I am also a certified law  
22 enforcement officer instructor by the Mississippi Board on Law  
23 Enforcement Officers Standards and Training.

24 Q. And have you been accepted by the courts in this  
25 state as an expert in the field of crime scene evidence  
26 recovery?

27 A. Yes, sir; I have.

28 BY MR. EVANS: Your Honor, at this point before  
29 I go further, I would offer her as an expert in that

1 field.

2 BY MR. JOHN GILMORE: No objection, Your Honor.

3 BY THE COURT: Okay. Let the record reflect  
4 that the Court accepts her as an expert in that  
5 field.

6 BY MR. EVANS: Thank you, Your Honor.

7 BY MR. EVANS:

8 Q. Ms. Schoene, I will direct your attention to July  
9 16th, 1996, a Tuesday, and ask you if you were working that  
10 day?

11 A. Yes, sir. I was.

12 Q. Did you have an occasion to be called to a crime  
13 scene in Montgomery County, Mississippi?

14 A. Yes, sir. I was.

15 Q. Do you remember approximately what time of day you  
16 were called?

17 A. Yes, sir. I received the call around 10:21 A M that  
18 morning, and I began my trip to Winona at approximately 11:55  
19 that morning.

20 Q. And do you remember what time you arrived in Winona?

21 A. Yes, sir. I arrived at Winona at Tardy Furniture  
22 store at 1:10.

23 Q. What was the purpose of you going to Tardy Furniture?

24 A. I was requested by the law-- a law enforcement  
25 agency, the Mississippi Highway Patrol Criminal Investigations  
26 Bureau. Their investigators had called my director, and my  
27 director sent me and another crime scene analyst to Winona to  
28 assist with the documentation and collection of evidence at  
29 that crime scene.

1 Q. And who assisted you from the Crime Lab?

2 A. Jody Creel Newell. She is also a forensic scientist  
3 employed at the Crime Lab.

4 Q. Would you tell us the first step that you took when  
5 you arrived at the store?

6 A. Yes, sir. The first, generally the first thing that  
7 we do at a crime scene is to survey the area. I briefly walked  
8 through Tardy Furniture store, observed the three victims that  
9 were there, and then I began documentation.

10 Q. Okay, could you tell us who, if anyone, had the scene  
11 secured at the time you arrived?

12 A. I do know that it was secured, but I cannot-- I  
13 don't-- I believe Winona Police Department, but I'm not  
14 positive.

15 Q. Did you see the Police Chief, Johnny Hargrove?

16 A. Yes, sir.

17 Q. After you initially viewed the scene and saw three  
18 bodies there, did you talk with any of the officers about what  
19 they had initially found? At this point I don't want you to  
20 tell me what they said. That would be hearsay, but did you  
21 talk with officers before you started your procedure?

22 A. Briefly I talked with officers to obtain a general  
23 history of what had happened that day and circumstances that  
24 had led up to them requesting our assistance.

25 Q. And in your efforts to recover any evidence that  
26 might be at the scene, would you explain to the jury how you  
27 went about doing that that day?

28 A. Well, there was two, primarily two different types of  
29 evidence that I recovered from the crime scene that day -

1 photographs and casings, projectiles and fragments.

2 Q. Did you, in fact, take photographs of what you saw  
3 there at the scene?

4 A. Yes, sir. I did.

5 Q. And you have described casings. Can you tell the  
6 jury in case there is someone on the jury that doesn't know  
7 what a casing is, what that is?

8 A. It's a very good question. A cartridge is what  
9 people sometimes call a live round or what you may see as a  
10 bullet. A casing is the jacket around the bullet, and there  
11 is, you have, in a cartridge or a live round you have a casing  
12 which is what holds the projectile or the piece, the piece of  
13 lead that comes out of the firearm. And a casing is more or  
14 less the empty shell left behind.

15 Q. Can you tell us how many separate casings you found  
16 in the store that day?

17 A. Yes, sir. I found five separate casings.

18 Q. And what caliber were these casings?

19 A. The head stamp read .380.

20 Q. All of them the same caliber?

21 A. I believe so.

22 BY MR. BILLY GILMORE: Your Honor, I'm going to  
23 object unless she knows so.

24 BY MR. EVANS:

25 Q. If you would, refer to your notes?

26 A. Yes, sir. All five were .380's.

27 Q. Thank you. And how many projectiles or pieces of  
28 projectiles did you find?

29 A. There were two projectiles that I collected and two

1 fragments of projectiles that I collected. A projectile would  
2 be more intact than a fragment. A fragment would be a piece of  
3 lead.

4 Q. And what would cause a projectile to fragment?

5 A. If it hit an intermediate target.

6 Q. All right. Did you also do a diagram of the area?

7 A. Yes, sir. I sketched the area of the furniture store  
8 where the three victims were located.

9 Q. And in that diagram did you also show where you  
10 recovered the casings and the projectiles?

11 A. Yes, sir.

12 Q. Would your diagram better assist you in being able to  
13 point out to the jury where you collected the evidence?

14 A. Most definitely.

15 BY MR. EVANS: May I have a moment, Your Honor.

16 (Mr. Evans gets some exhibits.)

17 BY MR. EVANS:

18 Q. I will hand you Exhibits 82 and 82A and ask you, if  
19 you would, to compare these to your original diagram.

20 A. Yes, sir. This appears to be a reduced photo--  
21 Exhibit, State's Exhibit 82 appears to be a reduced image of a  
22 photocopy of my original sketch. And State's Exhibit 82A  
23 appears to be a transparency of the same sketch.

24 Q. And you do have your original sketch here with you  
25 today?

26 A. Yes, sir.

27 Q. And you have just compared those two with the  
28 original; is that correct?

29 A. Yes, sir.

1 BY MR. EVANS: Your Honor, I offer these two  
2 exhibits into evidence at this time.

3 BY MR. JOHN GILMORE: No objection, Your Honor.

4 BY THE COURT: Let them be marked.

5 (DRAWING OF CRIME SCENE BY MS. SCHOENE AND  
6 OVERLAY WHICH WERE PREVIOUSLY MARKED AS STATE'S  
7 EXHIBITS S-82 AND S-82A FOR IDENTIFICATION WERE NOW  
8 RECEIVED IN EVIDENCE.)

9 BY THE COURT: We are going to try this with the  
10 lights on, and I will ask them if they can see it.

11 (Exhibit S-82A was shown up on the wall through  
12 the overhead projector.)

13 BY THE COURT: Can y'all see that okay with the  
14 lights on?

15 BY SEVERAL JURORS: Yes.

16 BY THE COURT: All right.

17 BY MR. EVANS:

18 Q. All right, Ms. Schoene, Exhibit 82A--

19 (Pause while Mr. Gilmore confers with Mr.  
20 Evans.)

21 BY MR. EVANS:

22 Q. Exhibit 82A, is this the overlay that shows your  
23 diagram of the store?

24 A. Yes, sir. This is not the entire store. This is a  
25 portion of the store.

26 Q. All right, what I would like to do, I would like to  
27 hand you my laser pointer. Just mash the button and aim it at  
28 what you want to point at.

29 A. Okay.

1 Q. If you would, use that pointer and just describe to  
2 the jury what your diagram shows.

3 A. The furniture store, Tardy Furniture store was  
4 divided into two halves. This is the northern half or a  
5 portion of the northern half of the store. This is where the  
6 three victims were located and also the physical evidence that  
7 I will be describing were all located in this area.

8 (NOTE: Witness points on wall with laser pointer as  
9 she testifies.)

10 A. This represents a victim, Bertha Tardy. This is  
11 another victim, Robert Golden, and here is a third victim,  
12 Carmen Rigby. Now as you can see, I have some numbers here.  
13 Numbers 1 through 5 represent the casings and the location of  
14 the casings that I collected. If you will recall, the casing  
15 is the shell, what is left behind when a bullet is fired. As I  
16 said, I collected five casings. Here is the first one, the  
17 first casing next to Robert Golden. The second casing; the  
18 third casing may be difficult to see, but it is very close to  
19 the body of Carmen Rigby, labeled 3. Number 4 is this fourth  
20 casing over here. And 5 is the casing that was closest to the  
21 body of Bertha Tardy. I collected one cartridge, and a  
22 cartridge or a live round is the casing with the bullet still  
23 inside that has not been fired. I labeled that 1A. That was  
24 located here.

25 The two projectiles that I collected are given the  
26 numeral B, and this is 2B over here on the south side of the  
27 counter in between Bertha Tardy and Carmen Rigby. And 1B, this  
28 is a projectile that was collected very close to the body of  
29 Robert Golden. The other two items that I-- the other two



1 items that I collected here were fragments, and I labeled those  
2 C. This here is 1C near the body of Carmen Rigby, and 2C that  
3 was located in a pool of blood in between the bodies of Robert  
4 Golden and Carmen Rigby. I also collected photographs of shoe  
5 impressions.

6 Q. Would you point out on the diagram where you  
7 recovered the shoe impressions?

8 A. Yes. The shoe impressions were labeled A, B, and C,  
9 and here they are. This is A, B, and C. They are located at  
10 the top of the slope that connects the two sides of the  
11 furniture store, very close to the body of Carmen Rigby.  
12 Somewhat in between the bodies of Bertha Tardy and Carmen Rigby  
13 were these three shoe impressions, partial shoe impressions.  
14 They were not complete.

15 Q. All right. If you would, just stop right there for a  
16 moment. The items that you recovered, what did you do to  
17 protect those items?

18 A. When I collect evidence from a crime scene,  
19 especially small items like this, I put them in sterile, small,  
20 white pill boxes and label the boxes and seal the boxes and  
21 deliver them to the Crime Laboratory.

22 BY THE COURT: (Pause) Have you got that diagram  
23 in front of you?

24 BY THE WITNESS: Yes, sir.

25 BY THE COURT: Let me see it.

26 (Pause; The Court hands the diagram back to the  
27 witness.)

28 BY MR. EVANS: May I proceed, Your Honor?

29 BY MR. EVANS:

1 Q. I will hand you Exhibit 77 and ask you to examine  
2 this exhibit if you would?

3 A. Yes. I recog-- this is a photocopied image of the  
4 original sketch that I produced.

5 Q. And that is a sketch that is the same size as you  
6 originally drew it; is that correct?

7 A. Yes, sir.

8 Q. Would you compare that to the original to make sure  
9 that it is a true and correct copy?

10 A. Yes, sir.

11 BY MR. EVANS: I offer Exhibit 77 into evidence,  
12 Your Honor.

13 BY THE COURT: Objection?

14 BY MR. JOHN GILMORE: No, Your Honor.

15 BY THE COURT: Let it be admitted.

16 (SKETCH OF SCENE BY MS. SCHOENE REFERRED TO  
17 ABOVE AND PREVIOUSLY MARKED AS STATE'S EXHIBIT S-77  
18 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

19 BY MR. EVANS:

20 Q. Ms. Schoene, the foot impression, shoe impressions  
21 that you saw; what, if anything, did you do to preserve those  
22 impressions so that someone else might later look at them?

23 A. The footwear impressions at the crime scene at the  
24 top of that slope were photographed using black and white film,  
25 which is the proper and the most recommended way to document  
26 footwear impression evidence.

27 Q. I want to hand you Exhibits 73, 74, 75, and 76 and  
28 ask you to examine them if you would, please.

29 A. Yes. I recognize these. State's Exhibits 73 and 74

1 are both enlarged black and white photographs of the shoe  
2 impression "B" at the crime scene.

3 Q. Okay.

4 A. These. (Holds up photographs) State's Exhibit 75 is  
5 an enlarged black and white photograph of the footwear  
6 impression that I labeled "A" which is the one closest to the  
7 front of the store.

8 Q. Okay.

9 A. And State's Exhibit 76 is an enlarged black and white  
10 photograph of the impression that I labeled "C" in the  
11 furniture store which is the impression closest to the body of  
12 Bertha Tardy.

13 Q. And do those four exhibits truly and accurately show  
14 those shoe impressions as you saw them that morning?

15 A. Yes, they do.

16 BY MR. EVANS: Your Honor, I offer these  
17 exhibits into evidence.

18 BY MR. JOHN GILMORE: No objection, Your Honor.

19 BY THE COURT: What is the number on them, Mr.  
20 Evans?

21 BY MR. EVANS: 73, 74, 75, and 76, Your Honor.

22 BY THE COURT: Let them be admitted.

23 (PHOTOGRAPHS OF SHOE TRACKS WHICH WERE  
24 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-73, S-74,  
25 S-75, AND S-76 FOR IDENTIFICATION WERE NOW ALL  
26 RECEIVED IN EVIDENCE.)

27 BY MR. EVANS: Your Honor, may I pass these to  
28 the jury while I continue?

29 BY THE COURT: They have been admitted. You

1                   may.

2                   (Exhibits S-73 through S-76 were passed to the  
3                   jury.)

4 BY MR. EVANS:

5           Q.   Ms. Schoene, what substance were these shoe  
6           impressions made in?

7           A.   They appeared to be made in blood.

8           Q.   Okay. The projectiles, fragments and the casings  
9           that you recovered, would you be able to identify the boxes  
10          that you sealed them in?

11          A.   Yes, sir.

12          Q.   I want to hand you Exhibits 93, 94, 95, 96, 97, 98,  
13          99 and 100. And I will ask you to put them in what order you  
14          can best describe them in.

15          A.   Okay. (Pause).

16                   (Mr. Evans and Mr. Horan confer.)

17                   BY MR. EVANS: Just a second.

18 BY MR. EVANS:

19          Q.   All right, have you had an opportunity to put those  
20          in order?

21          A.   Yes, sir.

22          Q.   If you would, take the first exhibit and give me the  
23          Courts exhibit's number first?

24          A.   This is State's Exhibit number 95.

25          Q.   Can you tell us what that exhibit is?

26          A.   Yes. I recognize this from our Mississippi Crime  
27          Laboratory case number, exhibit number, and my initials. I  
28          labeled this box, casing collected from near Robert Golden.  
29          This is casing number 1.

1 Q. Give me just a second.

2 A. It's your number 95.

3 Q. Okay, our number 95, which is the casing that you  
4 recovered from near Robert Golden; would you point out to the  
5 jury on the diagram?

6 A. This casing next to Robert Golden.

7 Q. All right.

8 A. Is this box.

9 Q. If you would, set it over to the side for me for just  
10 a second. Take the next exhibit and tell us what the Court  
11 exhibit number is first?

12 A. This is State's Exhibit number 96. This is  
13 Mississippi Crime Laboratory's Exhibit number 26.

14 Q. Okay, and what is it?

15 A. This is a casing collected from near Robert Golden,  
16 casing number 2.

17 Q. Would you point that exhibit out on your diagram,  
18 please?

19 A. (Witness points with laser pointer on wall.) Casing  
20 number 2.

21 Q. All right, thank you. Set that aside and go to the  
22 next exhibit.

23 A. The next exhibit is labeled State's Exhibit 97,  
24 Mississippi Crime Laboratory case, exhibit number 27. And this  
25 is, this box contains casing collected from near Carmen Rigby,  
26 casing number 3 which is here. (Points with laser pointer).

27 Q. And would you please point that out on the diagram?

28 A. This is the body of Carmen Rigby, and this is casing  
29 number 3.

1 Q. All right, the next exhibit that you have there  
2 before you.

3 A. This box is labeled State's Exhibit number 98;  
4 Mississippi Crime Laboratory case number-- excuse me, exhibit  
5 number 28. And it is a casing collected from the area between  
6 Carmen Rigby and Bertha Tardy, casing number 4. (Points with  
7 laser).

8 Q. And you are pointing it out on the diagram at this  
9 time; is that correct?

10 A. Yes, sir.

11 Q. All right, thank you. If you would, go on to the  
12 next one.

13 A. This box is marked State's Exhibit 99; Mississippi  
14 Crime Laboratory exhibit number 29, and this box is labeled  
15 casing collected from near Bertha Tardy, casing number 5, which  
16 is (Points with laser).

17 Q. And you are pointing that exhibit out at this time;  
18 is that right?

19 A. Yes, sir. This represents the body of Bertha Tardy.  
20 This is casing number 5.

21 Q. Approximately how far was Bertha Tardy laying from  
22 the other three victims?

23 A. Bertha Tardy, from the edge of this bookcase, her  
24 left foot was approximately 220 inches.

25 Q. All right, what are you referring to to get that? Do  
26 you have a scale that shows distances?

27 A. I have a key and measurements that go with the  
28 sketch.

29 Q. And do those measurements truly and accurately depict

1 what that sketch shows?

2 A. The measurements on the key are true and correct.  
3 This scale or this sketch is not drawn to scale, so I guess the  
4 answer to your question would be no.

5 Q. But the key itself are actual measurements so that  
6 you know exactly how far everything was apart?

7 A. Yes, sir.

8 Q. I will hand you Exhibit 77A and ask you if you can  
9 identify that?

10 A. Yes, sir. This is State's Exhibit 77A. I recognize  
11 this from my initials at the bottom. This is two pieces of  
12 paper that are labeled "Key and Measurements for sketch of  
13 northwest room of Tardy Furniture Company, Winona,  
14 Mississippi."

15 Q. And is that the key that you used to make your  
16 measurements in this case?

17 A. Yes, sir. This is the key that I recorded  
18 information on about that sketch.

19 BY MR. EVANS: Your Honor, I offer this exhibit  
20 into evidence.

21 BY THE COURT: Any objection?

22 BY MR. JOHN GILMORE: No, Your Honor.

23 BY THE COURT: Let it be admitted.

24 (KEY TO SKETCH REFERRED TO ABOVE WHICH WAS  
25 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-77A FOR  
26 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

27 BY MR. EVANS:

28 Q. Ms. Schoene, if you would, take your next exhibit  
29 that is in front of you and tell us what the Court exhibit

1 number is on it?

2 A. This is State's Exhibit number 100, Mississippi Crime  
3 Laboratory case exhibit number 30, and this box is labeled  
4 cartridge collected from near Carmen Rigby, 1A.

5 Q. And would you point that out, please?

6 A. Here.

7 Q. All right, you are pointing it out on the diagram?

8 A. Yes.

9 Q. And cartridge is a live round with both parts to it?

10 A. Yes, sir. A cartridge would be the bullet in the  
11 casing, not fired.

12 Q. All right, if you would, set that aside for a  
13 moment. And I believe the last box that you have in front of  
14 you-- well, there is two more? Okay, the next one, what  
15 exhibit number is it according to?

16 A. This next exhibit is State's Exhibit 93, Mississippi  
17 Crime Laboratory exhibit number 32.

18 Q. And what is it?

19 A. It is a sealed white pill box labeled projectile  
20 collected from underneath love seat next to south side of  
21 counter; projectile 2B.

22 Q. And where did you recover it from?

23 A. Right here. (Pointing on diagram on wall) This is  
24 the main counter, this being north; this is just to the south  
25 side underneath the love seat.

26 Q. All right, and if you would, set that one aside for a  
27 moment and take the next box.

28 A. This is labeled State's Exhibit number 94;  
29 Mississippi Crime Laboratory exhibit number 33, and it is a



1 sealed white pill box labeled fragment collected from area near  
2 head of Carmen Rigby, fragment 1C. (Points with laser on  
3 diagram on wall) Here is Carmen Rigby. Here is 1C.

4 Q. All right, Ms. Schoene, and all of these exhibits,  
5 Exhibit 93 through Exhibit 100, would you tell the jury how you  
6 went about placing these items in the boxes and sealing the  
7 boxes?

8 A. There is one more over here.

9 Q. Okay, which exhibit number is that?

10 A. This is State's Exhibit 99.

11 Q. Okay, I believe we covered 99 a few minutes ago.

12 A. I'm sorry. I collected all of these exhibits by  
13 placing, with a gloved hand, latex gloved hand, picked up the  
14 projectile or the casing or the cartridge and placed it in  
15 this white pill box, labeled the pill box, and sealed the pill  
16 box.

17 Q. All right, and were these pill boxes delivered to  
18 anyone else at the Crime Lab for any reason?

19 A. Yes, sir. I transferred all of this evidence from  
20 the furniture store to the Crime Lab and secured them inside of  
21 the crime laboratory vault at which time they were held secure  
22 until the crime laboratory analysts that analyze this evidence,  
23 fingerprints and firearms examiner, went to the lab-- went to  
24 the vault to request these.

25 Q. And do you know whether or not other tests were  
26 performed on these exhibits?

27 A. Whether or not they were examined by other  
28 analysts?

29 Q. Yes, ma'am.

1 A. Yes, sir.

2 Q. Other than being examined, do these exhibits appear  
3 to be in the same condition now as they were when you sealed  
4 them?

5 A. The boxes do.

6 BY MR. EVANS: All right. Your Honor, I will  
7 offer Exhibits 93 through 100 into evidence at this  
8 time.

9 BY THE COURT: Any objection?

10 BY MR. JOHN GILMORE: Your Honor, may I approach  
11 the DA? May I approach the DA for just a second?

12 BY THE COURT: Sure.

13 (Counsel confer out of the hearing of the Court  
14 Reporter.)

15 BY THE COURT: Any objection?

16 BY MR. JOHN GILMORE: I believe he has--

17 BY MR. EVANS: I have one more that I want to  
18 add in there, Your Honor.

19 BY MR. EVANS:

20 Q. I will hand you this exhibit and ask you, if you  
21 would, to tell us the court number of it first?

22 A. This is State's Exhibit 92.

23 Q. Can you tell us what that exhibit is?

24 A. Yes, sir. This is Mississippi Crime Laboratory case  
25 number, exhibit number 31, and this is a sealed white pill box  
26 labeled projectile collected from area northeast of Robert  
27 Golden. This is projectile 1B.

28 Q. And would you point that out on the diagram for me,  
29 please?

1           A.   (Witness points with laser pointer.) 1B; this being  
2   the body of Robert Golden. This is 1B.

3           BY MR. EVANS: Okay. Your Honor, at this point  
4   I would again offer Exhibits at this time 92 through  
5   100 into evidence.

6           BY MR. JOHN GILMORE: No objection, Your Honor.

7           BY THE COURT: Let them be admitted.

8           (NINE WHITE PILL BOXES PREVIOUSLY MARKED AS  
9   STATE'S EXHIBITS S-92 THROUGH S-100 FOR  
10   IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

11          (Mr. Evans confers with Defense Counsel.)

12   BY MR. EVANS:

13          Q.   Ms. Schoene, if you would, look at your diagram and  
14   tell us Exhibit 2C on there. Have you described it already?

15          A.   I don't believe so. Exhibit, excuse me, 2C  
16   represents a fragment which is Mississippi Crime Laboratory  
17   exhibit number 34.

18          Q.   All right, and who was that fragment near?

19          A.   It was collected from a pool of blood near the  
20   southeast corner of the counter, so in between Robert Golden  
21   and Carmen Rigby.

22          Q.   All right, what size fragment are we talking about?

23          A.   I really, a very small piece of metal, but I didn't  
24   weigh it.

25          Q.   All right. You also, I believe, took photographs of  
26   the things that you have described; is that correct?

27          A.   Yes, sir.

28          Q.   I want to hand you first, Exhibits 16 and 21, along  
29   with corresponding slides and ask you to look at those if you

1 would, please?

2 A. Yes, sir. I recognize both of the photographs as  
3 well as the slides.

4 Q. All right, if you would take the lowest number  
5 exhibit first. Tell us the exhibit number on it.

6 A. Okay, this is labeled 16. The slide is labeled 16A,  
7 and the photograph is labeled 16.

8 Q. And can you tell us what that photograph shows?

9 A. Yes. This photograph represents the slide that I  
10 took. I can identify them because my initials are on the back  
11 and on the slide. This is a photograph of Bertha Tardy in the  
12 background and the foot of Carmen Rigby. Here is the ramp; you  
13 may remember seeing in the overhead on the sketch. The three  
14 footwear impressions, A, B and C, are in this area.

15 Q. Does that photograph truly and accurately show what  
16 you saw there at the scene that day?

17 A. Yes, sir. It does.

18 Q. Take the next exhibit number if you would.

19 A. Okay, the slide is labeled the 21A, and the  
20 photograph is labeled 21. And I recognize both of these from  
21 my case, Mississippi Crime Laboratory case number and my  
22 initials.

23 Q. And can you identify what that photograph shows?

24 A. Yes, sir. This photograph shows the feet and the  
25 body of Carmen Rigby at the top of the ramp.

26 Q. All right. Is that the same ramp that you have  
27 described the footprints as being at the end of?

28 A. Yes, sir, at the top of, in the area at the top of  
29 the ramp, and in the background of this picture is Robert

1 Golden.

2 BY MR. EVANS: All right. Your Honor, I offer  
3 16, 16A, 21, and 21A into evidence at this time.

4 BY THE COURT: Any objection?

5 BY MR. BILLY GILMORE: No objection.

6 BY THE COURT: Let them be marked.

7 (PHOTOGRAPHS AND CORRESPONDING SLIDES PREVIOUSLY  
8 MARKED AS STATE'S EXHIBITS S-16, S-16A, S-21, AND  
9 S-21A FOR IDENTIFICATION WERE NOW RECEIVED IN  
10 EVIDENCE.)

11 BY MR. EVANS: We might can do this with the  
12 lights on too. We will try.

13 (Puts S-16A and S-21A in the slide projector.)

14 BY MR. EVANS:

15 Q. All right, I believe this is Exhibit 21A; is that  
16 correct?

17 A. I don't recall.

18 Q. Let me hand you the photograph back so we can keep  
19 our numbers straight.

20 A. Yes. This appears to be 21A.

21 Q. All right, would you describe that ramp for us?

22 A. This is a ramp that connected the-- remember I said  
23 the store was divided into two halves, a northern half and a  
24 southern half. This ramp was one of two ways that you could  
25 access each side of the store. The northern half is slightly  
26 more elevated than the southern, so you would go up the ramp to  
27 get to the northern half where the victims were located. In  
28 this area, this general area is where the footwear impressions  
29 A, B and C were located. Would you like for me to describe

1 this picture?

2 Q. Yes, if you would.

3 A. This is the feet and body of Carmen Rigby, and here  
4 is the head and shoulders of Robert Golden.

5 Q. All right, I want to stop you at this point. Do you  
6 have the-- here they are. I'm going to hand you the shoe  
7 impressions back, and if you would, just hold them up as you go  
8 over them. I would like for you as close as you can to give us  
9 an idea of what area each of those photographs were taken in  
10 and which one, which ones were the darkest and which ones were  
11 the lightest impressions?

12 A. Okay, these four black and white enlargements  
13 represent three photographs, and I labeled the three partial  
14 impressions "A," "B," and "C"; "A" being closest to the front  
15 of the store. So "A" would be closer. This is the direction  
16 of the front of the store. This is the direction of the back  
17 of the store. So "A" would be closer to over here. And "A"  
18 (Points with laser pointer) I believe there is-- yeah, there is  
19 one enlargement of "A," the partial footwear impression that I  
20 labeled "A." "A" was located approximately 18 inches north of  
21 these shelves, about 18 inches. Impression "B" was located  
22 approximately 39 inches. "B" is more in the center here.  
23 (Pointing) These two black and white enlargements represent  
24 impression "B" (Holds up two photographs).

25 Q. Okay.

26 A. Okay, I will explain the lighting after I explain  
27 "C." "C," this black and white enlargement represents  
28 impression that I labeled "C." "C" was located more closely to  
29 Bertha Tardy, more closely to the back of the store, and it was

1 approximately 77 inches from this bookshelf.

2 Q. Which of these impressions was closest to the pool of  
3 blood that was, I believe described to you as being where BoBo  
4 Stewart was laying?

5 A. "C." "C" is closest; there was a pool of blood here  
6 in this area, (Pointing) in this general area near the front of  
7 this counter. And as you can see, it appears that "C," the  
8 impression closest to the blood appears to be thicker, the  
9 impression, the lines are a little bit more thick, not quite as  
10 detailed. This is "C." These again both represent "B." And  
11 the piece of paper with the "N" and an arrow, that represents  
12 the northern direction. And northern, if you are looking here,  
13 is straight up this ramp. That is the northern direction. The  
14 front of the store faced east.

15 Q. And what expert at the Crime Lab did you turn your  
16 photographs over to, or who at the Crime Lab -- I may have  
17 asked that wrong. Not necessarily who did you turn them over  
18 to, but what expert at the Crime Lab looked at these  
19 impressions to determine what they were made by?

20 A. Joe Andrews.

21 Q. For later purposes, I want to hand you a board and  
22 ask you to pin those photographs on this board in the order  
23 from the blood toward the front of the store?

24 A. From the blood?

25 Q. Right. From the blood toward the front of the  
26 store.

27 A. I will treat this as if it's the floor, and I am  
28 looking at it from Bertha-- Carmen Rigby. If the blood is  
29 here, "C" was closest. "B" was next. And "A" was farthest

1 away from the pool of blood.

2 Q. If you would, just stick those on the board in that  
3 order with the pins that I have provided for you.

4 A. Be careful (Witness complies.)

5 Q. It go all the way through?

6 A. Yes, sir.

7 Q. All right, do all of the exhibit numbers still appear  
8 on the front of that?

9 A. State's exhibit numbers.

10 Q. Okay, thank you.

11 BY THE COURT: Okay, all those things are  
12 exhibits now.

13 BY MR. EVANS: Yes, sir.

14 BY THE COURT: I mean they have been admitted  
15 into evidence. I don't want to get them -- let's  
16 keep them up here by Linda.

17 BY MR. EVANS: Will the easel be in the Court's  
18 way over here on this side?

19 BY THE COURT: That will be fine as long as the  
20 Court Reporter knows where they are.

21 BY MR. EVANS: Yes, sir.

22 BY MR. EVANS:

23 Q. I want to hand you next Exhibits 23 and 28 along with  
24 the corresponding slides. Starting with 23, I will ask you to  
25 look at those exhibits if you would.

26 A. Yes, sir. I recognize both of these. Exhibit,  
27 State's Exhibit 23 is a photograph from State's Exhibit 23A,  
28 slide 23A. And I recognize both of these from our Crime  
29 Laboratory case number and my initials on the back as well as



1 on the slides. 23 and 23A represent a photograph that I took  
2 that showed the purse that had identification inside of it as  
3 belonging to Carmen Rigby behind the counter.

4 Q. All right, and if you would, take the next exhibit  
5 number, please.

6 A. Slide labeled 28A and photograph labeled 28, I  
7 recognize from Crime Laboratory case number and my initials.

8 Q. And what does it show?

9 A. It shows the safe in Bertha Tardy's office in an open  
10 position. The door of the safe is open in this picture.

11 Q. And do those two photographs and the corresponding  
12 slides truly and accurately show what you saw at the scene on  
13 those two occasions?

14 A. Yes, sir. They do. However, upon my arrival, the  
15 safe door was not open. I opened the safe.

16 Q. Was it locked or unlocked?

17 A. No, it was closed but not locked. This was a  
18 photograph taken to document the contents of the safe even  
19 though it was closed.

20 BY MR. EVANS: Your Honor, I offer Exhibits 23,  
21 23A, 28 and 28A into evidence.

22 BY THE COURT: Objection?

23 BY MR. JOHN GILMORE: No objection, Your Honor.

24 BY THE COURT: All right, 23 and 23A?

25 BY MR. EVANS: Yes, sir, and 28 and 28A.

26 BY THE COURT: Let them be marked.

27 (PHOTOGRAPHS AND CORRESPONDING SLIDES REFERRED  
28 TO ABOVE PREVIOUSLY MARKED AS STATE'S EXHIBITS S-23,  
29 S-23A, S-28, AND S-28A FOR IDENTIFICATION WERE NOW

1 RECEIVED IN EVIDENCE.)

2 (Slides S-23A and S-28A were put in the  
3 projector.)

4 BY MR. EVANS:

5 Q. Ms. Schoene, can you tell us which exhibit number  
6 this is?

7 A. Yes, this slide represents Exhibit 23, State's  
8 Exhibit number 23. It shows a purse behind the counter of the  
9 area, the northwestern part of Tardy Furniture store. This is  
10 the front of the store. This is the opening where the ramp  
11 eventually leads to the second half of the store. This is that  
12 opening, and here, this is the area behind the counter. This  
13 is as it was when we arrived, and this is a purse that is open,  
14 and it contains identification belonging to Carmen Rigby.

15 Q. All right. And just for directional purposes, can  
16 you tell us where Robert Golden's body was in relationship to  
17 this photograph?

18 A. Yes. East is this way toward the front. Robert  
19 Golden is located just to the other side of the counter about  
20 right here. (NOTE: Witness is using pointer.) Carmen Rigby  
21 was just on the other side of the counter approximately here.  
22 And Bertha Tardy's body was located, if you walk this way, back  
23 there.

24 Q. All right. Do you notice anything else on behind the  
25 counter that you checked at that time?

26 A. We looked in these drawers. There was a money drawer  
27 here that was partially opened.

28 Q. All right, what was in that money drawer that was  
29 partially opened?

1           A.    There was change. I have a-- would you like for me  
2 to read the inventory of that drawer.

3           Q.    If you don't mind. Would it help you to refer to  
4 your inventory to remember exactly what was in there?

5           A.    Yes, sir. Okay, in this drawer-- it's difficult to  
6 see in this picture, but there is a-- it's right on top of this  
7 second set of filing cabinets right here. It contained no  
8 bills, all different types of coins; there is pennies, nickels,  
9 dimes and quarters; several different sets of keys; an Exxon  
10 credit card; and an envelope containing two different checks.

11          Q.    All right, I want to hand you Exhibits 26 and 26A.  
12 These may not be pictures that you took yourself, but I would  
13 like you to examine them at this point if you would.

14          A.    Yeah, I did not take this slide, but it is, the slide  
15 labeled 26A and photograph labeled 26 illustrates what was in  
16 the money drawer.

17          Q.    And does that photograph truly and accurately show  
18 what you saw in the drawer that you have described to the jury  
19 now?

20          A.    Yes, sir.

21                BY MR. EVANS: Your Honor, I offer 26 and 26A  
22 into evidence also.

23                BY THE COURT: Any objection?

24                BY MR. JOHN GILMORE: No, Your Honor.

25                BY THE COURT: Let them be admitted.

26                (PHOTOGRAPH AND CORRESPONDING SLIDE PREVIOUSLY  
27 MARKED AS STATE'S EXHIBITS S-26 AND S-26A FOR  
28 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

29                (Slide S-26A put in the projector.)

1 BY MR. EVANS:

2 Q. Is the lights low enough to where you can see the  
3 slide?

4 A. Yes, sir. I can recognize the slide.

5 Q. All right, 26A, can you describe to the jury using  
6 the pointer what you see there?

7 A. This is the open money drawer. Again, this is not  
8 the position that it was in upon our arrival. An investigator  
9 has opened it and taken a picture of it like this. Here is a  
10 change box or a money box, a set of keys here, more keys back  
11 here. We have a bin full of pennies, looks like quarters,  
12 dimes, and nickels. This is empty, and this is empty.

13 Q. Are there are no bills left in the drawer; is that  
14 correct?

15 A. No, sir; there were no bills in the drawer.

16 Q. All right, what was the other exhibit number that you  
17 have got in front of you?

18 A. 28.

19 Q. And what is this exhibit, 28?

20 A. I took this photograph to photographically record  
21 what the contents of this safe were when we were at this  
22 furniture store when we arrived at the scene, as Bertha Tardy  
23 was located outside of this office. But this appeared to be  
24 her office in the back, and this door to the safe was closed,  
25 but it was not locked. It was not closed all the way. It may  
26 have been open half an inch, something like that, but by no  
27 means did it look like this. I took this photograph to record  
28 that things looked to be in order and fairly straight, kept  
29 straight in the safe in her office.

1 Q. All right. I'm going to hand you Exhibits 41 and  
2 41A, 42 and 42A, 46 and 46A and ask you to examine them if you  
3 would, please.

4 A. Yes, sir. I recognize these.

5 Q. If you would, take them in order and tell us what  
6 Exhibit 41 and 41A shows?

7 A. Okay, 41 and 41A are photographs that show the same  
8 area but from different angles. The area represented in these  
9 two photographs is near the body of Bertha Tardy. It  
10 represents the casing that was near her body and a pair of  
11 eyeglasses that were most probably hers that were underneath  
12 the bed.

13 Q. All right, which exhibit was that?

14 A. This is Exhibits 41 and 42.

15 Q. All right.

16 A. Both show casing 5 in the sketch near Bertha Tardy.

17 Q. And Exhibit 46 and 46A, what does it show?

18 A. 46 and 46A represent Crime Laboratory Exhibit number  
19 31, a projectile near the body of Robert Golden, 1B in the  
20 sketch.

21 Q. All right, do those three photographs, 41, 42 and 46,  
22 along with the corresponding slides truly and accurately depict  
23 what you saw there that morning?

24 A. Yes, sir. They do.

25 BY MR. EVANS: Your Honor, I offer these six  
26 exhibits into evidence.

27 BY THE COURT: Objection?

28 BY MR. JOHN GILMORE: No, Your Honor.

29 BY THE COURT: Let them be marked.

1 (PHOTOGRAPHS AND CORRESPONDING SLIDES REFERRED  
2 TO ABOVE WHICH WERE PREVIOUSLY MARKED AS STATE'S  
3 EXHIBITS S-41, S-41A, S-42, S-42A, S-46, AND S-46A  
4 FOR IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

5 (Slides S-41A, S-42A, and S-46A were put in the  
6 slide projector.)

7 BY MR. EVANS:

8 Q. Ms. Schoene, I show you Exhibit 41A first and ask you  
9 if you can identify that exhibit?

10 A. Yes, sir. That is a slide showing a casing here and  
11 just barely, I believe you can see the edge of eyeglasses here  
12 underneath a bed, and the body of Bertha Tardy was found on  
13 the floor at the foot of this bed. (Pointing with laser  
14 pointer.)

15 Q. And do you remember what caliber casing that was?

16 A. That was a .380.

17 Q. Exhibit 42A, can you tell us what this is?

18 A. Yes, sir. This is a photograph of the same two  
19 things that I pointed out just from a different angle. This is  
20 the same casing right here which in the slide, excuse me, in  
21 the sketch is number 5, and it's Mississippi Crime Laboratory  
22 Exhibit 29, and here are the eyeglasses.

23 Q. From your findings, how many shots did it appear had  
24 been made in that area of the store?

25 A. I really can't make that conclusion.

26 Q. How many did you find?

27 A. I found one casing in that area of the store.

28 Q. All right, did you find any location in that area of  
29 the store that appeared to you like it might be where a bullet

1 had struck?

2 A. Yes.

3 Q. Can you describe-- this picture doesn't exactly show  
4 it, but can you describe from this picture approximately where  
5 you found that and describe the area?

6 A. There was a defect to the wall. Again, a defect, but  
7 it's difficult to make the determination that it was caused by  
8 a bullet. I can say that it was a defect in that some paint  
9 was chipped off, and you could see the brick. But other than  
10 that, I really could not say that that was caused by a bullet.

11 Q. All right. And is this the same glasses that are  
12 under the mattress that you pointed out in Exhibit 41A?

13 A. Yes, sir.

14 Q. At the point that you made your initial crime scene  
15 study, did you have any way of knowing how many projectiles  
16 were still in the bodies or how many passed through the  
17 bodies?

18 A. Absolutely none. It was a very difficult scene to  
19 collect evidence in that respect because it was such a large  
20 area, and there were so many victims, and there was truly no  
21 way to determine while I was there how many shots were fired.  
22 Without having the autopsy results, it is unknown to me as a  
23 crime scene analyst how many projectiles are still inside of  
24 the victim, and there may have been some stray shots fired by  
25 the offender that didn't hit any victim.

26 Q. Do you know approximately how long after you made  
27 your initial survey of the scene that the autopsy reports were  
28 finalized?

29 A. No, sir. I do not.

1 Q. Do you know who did the autopsies in this case?

2 A. Dr. Hayne did the autopsies in this case.

3 Q. All right. Exhibit 46A, can you tell us what this  
4 shows?

5 A. Yes, sir. This is a picture of a projectile in the  
6 sketch. It was labeled 1B. This is in between the body of  
7 Robert Golden and the front of the store.

8 Q. I show you Exhibits 7, 7A, 8, and 8A next and ask you  
9 if you can identify, these.

10 BY MR. BILLY GILMORE: What were those numbers  
11 again?

12 BY MR. EVANS: 7 and 8.

13 BY MR. BILLY GILMORE: 7 and 8?

14 BY MR. EVANS: And the slides with them.

15 BY THE WITNESS:

16 A. Yes, sir. I recognize these. Exhibits 7 and 8 are  
17 both photographs that represent-- well, this is the exterior of  
18 the back of Tardy Furniture store. This is Exhibit 7.

19 Q. All right.

20 A. And this Exhibit 8 is the inside of the back door of  
21 Tardy Furniture store, a picture of the back door from the  
22 inside.

23 Q. And do those two pictures truly and accurately depict  
24 what you found at the back of the store on both the inside and  
25 outside of the door?

26 A. Yes, sir.

27 BY MR. EVANS: Your Honor, I offer these  
28 exhibits into evidence at this time.

29 BY MR. JOHN GILMORE: No objection, Your Honor.



1                   BY THE COURT: Let them be admitted.

2                   (PHOTOGRAPHS AND CORRESPONDING SLIDES WHICH WERE  
3                   PREVIOUSLY MARKED AS STATE'S EXHIBITS S-7, S-7A, S-8,  
4                   AND S-8A FOR IDENTIFICATION WERE NOW RECEIVED IN  
5                   EVIDENCE.)

6                   BY MR. EVANS: Your Honor, to save a little  
7                   time, I would ask to just pass these two to the jury  
8                   as we continue.

9                   BY THE COURT: Okay, they have been admitted.  
10                  You may do so.

11                 BY MR. EVANS:

12                 Q. Exhibits 7 and 8, what was the purpose of you taking  
13                 those two photographs?

14                 A. It's my practice to take photographs of the entire  
15                 scene when I'm there, and I walked to the outside, to the alley  
16                 way behind Tardy Furniture and took several different  
17                 pictures. I took-- that's why I took the picture of the  
18                 exterior on the outside. On the interior I thought it was  
19                 significant that the back door was bolted shut, and I believe  
20                 there is presence of spider webs on that to show that it was  
21                 not likely that someone came and went through that door.

22                 Q. So the sole purpose for these photographs was to show  
23                 that the back of the store was secure?

24                 A. Documentation, yeah.

25                 BY MR. EVANS: Your Honor, again to possibly  
26                 save a few minutes, if I may, I would like to hand  
27                 these photographs to the witness, ask her to go  
28                 through them and see if any of these photographs are  
29                 necessary to show any of the exhibits that she

1 recovered. If they don't, we may not need to use  
2 them.

3 BY THE COURT: That will be fine.

4 (Mr. Evans hands some photographs to the  
5 witness.)

6 BY THE WITNESS:

7 A. Would you like for me to call these out as I'm going  
8 over them?

9 BY THE COURT: I think what he wants you to do  
10 is just-- correct me if I'm wrong, Mr. Evans, but I  
11 think he wants you to just go through them and see if  
12 there is anything new in there, I guess.

13 BY MR. EVANS:

14 Q. Right. If it is just repetitious, there is no need  
15 in taking the Court's time to show them, but if there is  
16 anything specific that would help you to describe to the jury,  
17 I would like to use them.

18 A. (Witness looks at two photographs.) Both of those  
19 have been the body of Bertha Tardy.

20 Q. All right.

21 BY THE COURT: You don't even have to describe  
22 them for the record. You can make your  
23 announcement.

24 BY THE WITNESS: (Long pause) I am finished.

25 BY THE COURT: Okay, she is finished, Mr. Evans.

26 BY MR. EVANS: Thank you, Your Honor.

27 BY MR. EVANS:

28 Q. Do any of those photographs show anything extra that  
29 we need to go into for the jury?

1           A.    This, Exhibit 13A may help the jury in  
2 understanding--

3           Q.    All right, would you describe Exhibit 13 for me?

4           A.    Yeah, 13 and 13A. 13A is the slide; 13 is the  
5 photograph. This photograph shows the relationship of Bertha  
6 Tardy to the office.

7           Q.    All right.

8           A.    In the back of the store.

9           Q.    All right, and does that photograph truly and  
10 accurately depict the relationship between her and the office  
11 in the back of the store?

12          A.    Yes, sir. It does.

13                   BY MR. EVANS: Your Honor, I offer 13 and 13A  
14 into evidence.

15                   BY THE COURT: Any objection?

16                   BY MR. JOHN GILMORE: No, Your Honor.

17                   BY THE COURT: Let it be admitted.

18                   (PHOTOGRAPH AND CORRESPONDING SLIDE PREVIOUSLY  
19 MARKED AS STATE'S EXHIBITS S-13 AND S-13A FOR  
20 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

21 BY THE WITNESS:

22          A.    And Exhibit 20 and the slide 20A is the body of  
23 Robert Golden, and in the pool of blood that his head and  
24 shoulders are lying in, you can, there is a casing. You can  
25 see both of the casings that were near his body that are Crime  
26 Laboratory Exhibits 25 and 26.

27          Q.    And which exhibit number is that?

28          A.    This is Exhibit, State's Exhibit number 20.

29                   BY MR. EVANS: Your Honor, I also offer Exhibit

1 20 and 20A into evidence.

2 BY THE COURT: Objection?

3 BY MR. JOHN GILMORE: Wait just a second, Your  
4 Honor. (Pause) No, Your Honor.

5 BY THE COURT: Let them be marked.

6 (PHOTOGRAPH AND CORRESPONDING SLIDE PREVIOUSLY  
7 MARKED AS STATE'S EXHIBITS S-20 AND S-20A FOR  
8 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

9 (Slides S-13A and S-20A were put in the slide  
10 projector, and the corresponding photographs were  
11 handed back to the witness.)

12 BY MR. EVANS: All right, let me back up to  
13 those.

14 BY MR. EVANS:

15 Q. All right, what exhibit number is this? (Showing  
16 slide on wall.)

17 A. This is Exhibit, State's Exhibit number 20.

18 Q. And would you describe for the jury what this shows  
19 as far as your collection of evidence?

20 A. Yes. This is the body of Robert Golden against the  
21 counter here, and there are two casings that I collected near  
22 his body. Here is one. That is number 2 in the sketch and  
23 Crime Laboratory Exhibit number 26. And here is the second  
24 casing near his body which is Crime Laboratory case exhibit  
25 number 25, and it's number 1 in the sketch. Here are the two  
26 casings. (Witness points with laser pointer.)

27 Q. And again for the record, which exhibit number is  
28 this?

29 A. For the Crime Laboratory case exhibit numbers, it's

1 exhibit number 25 and exhibit number 26.

2 Q. And the Court exhibit number?

3 A. I don't know.

4 Q. I think the picture is up there.

5 A. On the sketch? Is that what you mean?

6 Q. No, the photographs; did I not give it back to you?  
7 That's it.

8 A. Yeah, this is State's Exhibit number 20, photograph  
9 of Robert Golden.

10 Q. And the other exhibit number that you have in front  
11 of you still?

12 A. Photograph?

13 Q. Right.

14 A. Is State's Exhibit 13.

15 Q. Is this it?

16 A. No, one back.

17 Q. (Shows the next slide back).

18 A. That's it.

19 Q. Okay. Exhibit 13A, can you tell us in relationship  
20 to your recovery of evidence what this photograph shows?

21 A. Yes, sir. This photograph was taken to show the  
22 relationship between Bertha Tardy and the office in the back,  
23 in this back wall.

24 Q. All right, is this office the same office that the  
25 safe was in that you have described?

26 A. Yes, sir. That is the office that had the safe door  
27 that was closed but not locked.

28 Q. And in relationship to where Ms. Tardy is laying at  
29 that point there, can you give us an indication approximately

1 where the casing was recovered and also the glasses?

2 A. Yes. Casing number 5 was located approximately 64  
3 inches from Bertha Tardy's head, and the glasses were about 64  
4 inches also, in that same area.

5 BY MR. EVANS: If the Court will allow me just  
6 one second.

7 Q. All right, as far as the crime scene, were there any  
8 other duties that you performed at the crime scene?

9 A. Other than collecting evidence and documenting a  
10 crime scene, no, sir, there is not.

11 Q. All right, were you called to any other location  
12 while you were there in Winona that day?

13 A. Yes, sir. I am sorry. I misunderstood.

14 Q. No, the first question was just about the crime  
15 scene.

16 A. Okay, yes, sir. After I finished collecting evidence  
17 at the furniture store, I went to Winona Police Department to  
18 dust a window and a glove box for fingerprint impressions.

19 Q. And can you describe the vehicle that you dusted for  
20 fingerprints?

21 A. Yes, sir. It was a two tone brown Pontiac Phoenix  
22 LJ, an older model with electric windows. I have, the tag  
23 number was NRG 359, Montgomery County. It was located outside  
24 of the Winona Police Department.

25 Q. And do you know why you were asked to print that  
26 vehicle?

27 A. Yes, sir. I wasn't asked to print the entire  
28 vehicle, just the area around the glove box because some time  
29 during the time we were collecting evidence at the furniture

1 store, an investigator had told us that there had been a gun  
2 reported stolen--

3 BY MR. BILLY GILMORE: --I would object to  
4 hearsay, Your Honor.

5 BY THE COURT: Sustained.

6 BY MR. EVANS:

7 Q. All right, don't go into what the officer told you,  
8 but just describe the area and what you were looking for.

9 A. I was looking for fingerprints around the area of the  
10 glove box or the window.

11 Q. And would you describe the glove box in this vehicle  
12 as far as any damage?

13 A. (No response).

14 Q. Did you examine the glove box or just try to lift  
15 prints?

16 A. Strictly lifted prints.

17 Q. Okay. And do you remember which investigator asked  
18 you to get the prints from the car?

19 A. I believe it was Wayne Miller, with the Criminal  
20 Investigations Bureau of the Highway Patrol.

21 BY MR. EVANS: Your Honor, as far as the last  
22 question, Your Honor, we would still offer that  
23 question in as to why she was asked to print this  
24 car, not as hearsay but to show why it was necessary  
25 for her to print the vehicle, just in furtherance of  
26 her duties.

27 BY THE COURT: No, the objection is sustained.

28 BY MR. EVANS:

29 Q. All of the evidence that you personally recovered

1 from the scene and also the photographs that you took, did you  
2 personally deliver them to the Crime Lab in Jackson?

3 A. Yes, sir. I did.

4 BY MR. EVANS: Your Honor, I will tender the  
5 witness.

6 BY THE COURT: Okay. We are going to take the  
7 lunch break before we do cross-examination. Ladies  
8 and gentlemen, we are going to take a lunch break  
9 until about 1:30 or until such time as y'all get  
10 through eating. The bailiffs will take you to eat,  
11 or I don't-- are they going out to eat or they going  
12 to bring it here?

13 BY THE BAILIFF: I have not heard that  
14 discussed.

15 BY THE COURT: Okay, they have got you some food  
16 somewhere. Everybody just wait a minute before you  
17 leave the courtroom until I get through talking to  
18 the jury. You cannot discuss this matter amongst  
19 yourselves at this time. You cannot form any  
20 opinions about this case. You cannot allow anybody  
21 to talk to you about this case or in your presence.  
22 If you see-- I don't think you will be around any  
23 media, newspaper or radio or television, but if you  
24 are, of course, you cannot listen to anything, any  
25 reporting of this case. We are going to give you  
26 some juror buttons to wear that will identify you as  
27 jurors. That is for the purpose of helping people  
28 that don't know you are jurors from not talking to  
29 you. I will see y'all about 1:30.



1 (FOLLOWING THE NOON RECESS FROM 12:22 UNTIL 1:30  
2 P.M. ON TUESDAY, OCTOBER 14, 1997, TRIAL RESUMED IN  
3 OPEN COURT WITH ALL COUNSEL, THE DEFENDANT, AND THE  
4 JURY PRESENT AND WITH MELISSA SCHOENE STILL ON THE  
5 STAND:)

6 BY THE COURT: Make sure you keep your voice  
7 up. I think some of them are having trouble hearing  
8 some of the witnesses, not you necessarily, but some  
9 of them. So keep your voice up for me.

10 BY THE WITNESS: Okay.

11 BY THE COURT: All right.

12 BY MR. BILLY GILMORE: May I proceed, Your  
13 Honor?

14 CROSS-EXAMINATION BY MR. BILLY GILMORE:

15 Q. Pronounce your name again for me, please.

16 A. Schoene.

17 Q. Schoene. Ms. Schoene, what time did you arrive at  
18 the scene?

19 A. At the furniture store?

20 Q. Yes.

21 A. I arrived at the furniture store between 1:10 and  
22 1:15 P.M. on Tuesday, July the 16th.

23 Q. Okay, now I believe you said you obtained two types  
24 of evidence; is that correct?

25 A. More or less; two general types of evidence. I  
26 actually obtained more than that after looking at my evidence  
27 submission form. I had previously said two types. What I  
28 meant was evidence from firearms, firearms evidence, and  
29 photograph evidence, photographic evidence. I also obtained

1 latent print evidence as well.

2 Q. All right, you did obtain some prints, fingerprints?

3 A. Yes, sir.

4 Q. Where did you obtain those fingerprints?

5 A. I obtained fingerprints on and around the counter of  
6 the, the counter that we talked about, that was directly behind  
7 Robert Golden, on and around that counter and in different  
8 areas of the store.

9 Q. I presume your expertise is in fingerprint taking  
10 also?

11 A. My expertise is in crime scene evidence recovery, but  
12 yes, I am trained in fingerprint recovery, detection and  
13 collection.

14 Q. Are you able to compare fingerprints, known  
15 fingerprints to fingerprints you would lift at a scene?

16 A. No, sir. I am not a fingerprint compare analyst.

17 Q. Okay, in this particular case did you compare any  
18 fingerprints?

19 A. No, sir. I did not.

20 Q. You did obtain fingerprints off the counter?

21 A. On and around, yes, sir.

22 Q. Do you know how many different prints you obtained?

23 A. I obtained five different cards, and when I dust for  
24 latent prints, all that means is I have a fiberglass brush and  
25 black powder, and generally fingerprint residue, when left on  
26 an object, is invisible. And this powder, black powder on the  
27 brush allows crime scene analysts like me to detect  
28 fingerprints on objects that you can't just normally see. At  
29 this crime scene I dusted several different areas, and when we

1 are dusting and we see a latent print, we collect the latent  
2 print. And how we do that, we have tape, and we put the tape  
3 on top of the print, pull it up, and you can see the print on  
4 the tape, and then you attach it to a latent print card. And I  
5 obtained five of those latent lift cards, but now as far as how  
6 many latent lifts I collected, I don't know. But I put all of  
7 those on five cards.

8 Q. In other words, when you touch something with your  
9 hand, it leaves an oily print from your fingertips; is that  
10 correct?

11 A. It can; yes, sir.

12 Q. And that's what causes the black powder to stick to  
13 it?

14 A. It can; yes, sir.

15 Q. Okay, and each fingerprint has a different  
16 characteristic from other people's, in other words, each  
17 fingerprint is one in its own?

18 A. Yes, sir.

19 Q. And you said you did not compare these fingerprints  
20 to any other fingerprints?

21 A. No, sir. I am not a fingerprint expert.

22 Q. While we are on the fingerprints, did you fingerprint  
23 inside Doyle Simpson's automobile?

24 A. If that is the brown automobile that was located at  
25 Winona Police Department--

26 Q. Yes, the one you described this morning.

27 A. What was your question?

28 Q. Did you take fingerprints inside the car?

29 A. I dusted for latent prints inside around the glove

1 box area and the window.

2 Q. Okay, did you lift some latent prints?

3 A. Yes. I collected one latent lift card containing one  
4 lift, and as I described earlier, that is just one card with  
5 one lift off of it placed on that card.

6 Q. Okay. And I presume all these fingerprints that you  
7 lifted you carried to the lab or some fingerprint expert?

8 A. Yes, sir.

9 Q. Okay, do you know if a known set of Curtis Flowers'  
10 prints were also carried to the same place?

11 A. Do I know if a known print? I did not carry a known  
12 print of suspect fingerprints, but is your question was there a  
13 known, a set of known submitted to the Crime Laboratory?

14 Q. Yes. Do you know?

15 A. I did not submit it or receive it. I will check my  
16 paperwork. Again, when evidence is submitted to the Crime  
17 Laboratory, it comes in through our evidence management section  
18 or division, and from that point, I am not affiliated with that  
19 point. My job is to work the crime scene and collect the  
20 evidence and then turn the evidence into the evidence  
21 management section. So I do not know if knowns were submitted.

22 Q. Do you know if there was any comparison made to any  
23 known fingerprints?

24 A. I do not know that; no.

25 Q. Your records do not reflect that?

26 A. My records don't reflect that. But again, as I said,  
27 my records probably wouldn't reflect it. There is no reason  
28 for me to obtain that type of paperwork.

29 Q. Okay. Now you said part of the evidence was casings,

1 projectiles, and fragments; is that correct?

2 A. Yes, sir. That's correct.

3 Q. Are you also a ballistics expert, or does someone  
4 else do that?

5 A. I--

6 Q. Are you a ballistics expert?

7 A. No, sir. I am not a ballistics expert.

8 Q. So the information you testified this morning, you  
9 only gathered it up and carry it to someone else; is that  
10 correct?

11 A. That's exactly right. I collected and documented the  
12 evidence. I make no comparisons once it's collected.

13 Q. Okay, I believe you said this morning that you found  
14 five separate casings?

15 A. Yes.

16 Q. And you found two projectiles?

17 A. Yes.

18 Q. And you found two fragments?

19 A. Yes.

20 Q. And you also found one live round or a shell that had  
21 not been fired?

22 A. A cartridge that had not been fired; yes, sir.

23 Q. So when we are talking about casing, hull or empty  
24 cartridge, we are talking about the same thing; is that  
25 correct?

26 A. An empty cartridge, I haven't used that term. A  
27 cartridge as I described earlier or a live round, where you  
28 have a casing with what people consider a bullet still inside,  
29 that is a live round or a cartridge. And the casings, of which

1 I collected five, are basically the empty hulls that I believe  
2 that you are referring to.

3 Q. Okay. Do you know whether there was one or two guns  
4 fired in that store building?

5 A. No, sir. I don't.

6 Q. You do not know. Do you have any expertise in what  
7 we call the blood spatter technique?

8 A. No, sir.

9 Q. You do not?

10 A. I have training in blood spatter, but I do not  
11 consider myself to be an expert.

12 Q. Okay. Did you do any examination for blood spatter  
13 patterns?

14 A. Blood spatter patterns, no, sir; I did not.

15 Q. You did not?

16 A. If there were an area that looked like a blood  
17 spatter pattern would have been interpretively valuable, we  
18 probably-- well, I definitely would have documented it. I  
19 didn't see any areas inside of the Winona furniture store that  
20 looked like to me in my experience and training would have  
21 benefitted the case to have an expert in blood spatter pattern  
22 analysis review it.

23 Q. You made that decision yourself?

24 A. Yes, sir. I did.

25 Q. And you were of the opinion there was no blood  
26 spatter?

27 A. I said there was no blood spatter in my opinion that  
28 was interpretively valuable at the scene.

29 Q. Isn't it true that blood spatter tells you the

1 direction of the impact?

2 A. It is possible for blood spatter to tell you the  
3 direction of impact in some cases; yes, sir.

4 Q. Okay. You didn't think it was necessary to check  
5 that to see which angle the bullets were fired from?

6 A. Blood spatter alone in a case such as this where the  
7 victims are lying on a nonabsorbent surface, they were lying on  
8 -- I guess linoleum tile is what the floor of Winona furniture  
9 was. And there was a great deal of pooling of blood. When the  
10 victims were shot, wherever they were, they fell to the ground,  
11 and there was a large amount of pooling. So any place that  
12 there might have been a hole that might have had blood spatter  
13 that would have helped us determine something was soaked or  
14 seeped with blood. However, Dr. Hayne, the pathologist, may  
15 be able to help you more so with, I believe what you are  
16 asking.

17 Q. But the blood spatter would be at the immediate  
18 impact of the bullet, would it not?

19 A. No, it would not.

20 Q. It would not? So when would the blood spatter occur?

21 A. When would blood spatter occur?

22 Q. Yes.

23 A. It depends on the circumstances.

24 Q. Okay, but you didn't see any blood spatter that was  
25 of any significance and importance?

26 A. At that crime scene, no.

27 Q. Now you testified about the cash drawer, and I  
28 believe you said it was closed when you got there?

29 A. Sir, it was not closed all the way. It was partially

1 open, but I think, I believe I said about one inch, maybe one  
2 or two inches, but not wide open as it was in the picture. And  
3 I made that explanation to explain to the jury -- the picture  
4 made it look like the money drawer was all the way open, and  
5 it was not all the way open when I was there. That was  
6 something that an investigator did to show what was inside of  
7 the drawer.

8 Q. All right, did you not say this morning that somebody  
9 had opened the drawer before you got there?

10 A. No, I did not.

11 Q. Okay. It was opened about an inch or so when you  
12 observed it?

13 A. Yes, sir.

14 Q. And did you or another investigator open the drawer?

15 A. I opened the drawer to check the contents. And  
16 another investigator, I don't know if I closed it back or left  
17 it open for that investigator, whoever took that photograph. I  
18 can't tell you if I am the one that opened or if they are the  
19 one that opened it.

20 Q. So you don't know whether there was any bills ever in  
21 that cash drawer that morning or not, do you?

22 A. No, sir. I have no idea.

23 Q. All you know there was some change and keys and a  
24 credit card and a couple of checks or something; is that  
25 correct?

26 A. What did you say was in it?

27 Q. I believe you testified there was some change?

28 A. Yes, sir.

29 Q. Keys?



1 A. Yes, sir.

2 Q. And some checks and an envelope?

3 A. Yes, sir.

4 Q. But there was no bills, no folding fives, tens, ones,  
5 twenties, fifties, hundreds?

6 A. No, sir.

7 Q. Nothing like that, okay. Have you ever fired a  
8 handgun yourself?

9 A. Yes, sir.

10 Q. Okay, now you are familiar with the type weapon that  
11 you suspect being used in this crime?

12 A. No, sir. I did not attempt, nor will I now, to do  
13 any type of reconstruction. Again, my part in this case is to  
14 document and collect the physical evidence at the crime scene.

15 Q. Do you know the pattern of a bullet-- of a hull or  
16 casing that ejects out of a semi-automatic .380 pistol?

17 A. Do I know the ejection pattern of that particular  
18 weapon?

19 Q. Yes.

20 A. No, sir. I don't. These questions would probably be  
21 better asked and answered by our firearms expert, who I believe  
22 is on the witness list.

23 Q. Okay. Now the safe itself, I believe you also said  
24 it was closed when you got there?

25 A. Yes, sir. The safe in Ms. Tardy's office in the very  
26 back was closed but not locked. It wasn't all the way closed,  
27 but it was for practical purposes closed, but not locked.

28 Q. In other words, the door was pushed to, but you would  
29 have to turn a handle or turn the tumblers or something to lock

1 it?

2 A. Yes, sir.

3 Q. Okay, and that's--

4 A. --I would assume so. I didn't try to lock it. So I  
5 would assume that you would definitely have to close it all the  
6 way and do some type of manipulation, but I did not lock it so  
7 I don't know how to lock it.

8 Q. But you did open the safe wide where you could take a  
9 picture?

10 A. Yes, sir. I opened it wide to document what was  
11 inside.

12 Q. And the picture that you have described this morning  
13 to the jury that we will have a chance to look at, does that  
14 depict what you saw at the scene?

15 A. Yes, sir. The picture, the slide that you all saw  
16 depicts accurately what I saw at the crime scene.

17 Q. Okay, was anything disturbed in that safe that you  
18 could tell?

19 A. Not that I could tell. It looked to be orderly.  
20 However, I don't know what it looked like before. All I can  
21 say, as you can see by looking at the picture, it did not look  
22 like it had been ransacked or rummaged through. It looked to  
23 be fairly in order.

24 Q. You have been at other crime scenes where safes have  
25 been involved, have you not?

26 A. Excuse me?

27 Q. Have you been, investigated other crime scenes when a  
28 safe would be involved?

29 A. I have investigated other crime scenes where there

1 have been safes; yes, sir.

2 Q. Isn't it the normal thing that people pull things out  
3 looking for valuables?

4 A. It depends on the motive of the person doing the  
5 searching, I would imagine.

6 Q. But isn't that the normal thing you find?

7 A. In case of a robbery, probably so.

8 Q. Okay. Now getting back to the inside of the counter,  
9 I believe you were shown a picture of a purse sitting inside  
10 the counter; is that correct?

11 A. There was a purse, if you all remember, on the bottom  
12 on the floor behind the U-shaped counter in the middle of the  
13 store. It was open and it had identification belonging to  
14 Carmen Rigby.

15 Q. Now I believe that purse had money in it, didn't it?

16 A. Yes, sir. I believe it had a-- let me refer to my  
17 notes. (Pause) Well -- here we go. If you would just like for  
18 me to read you the contents.

19 Q. Well, was there money in the purse?

20 A. Yes, sir. There was a ten dollar bill exposed.

21 Q. As a matter of fact, you could walk up and look down  
22 in the purse before you touched it, and you could see a ten  
23 dollar bill in the purse?

24 A. If you were to walk all the way around behind the  
25 counter and stand over the purse and look at it, yes, sir; you  
26 could see the ten dollar bill.

27 Q. Okay. Tell the jury whether or not that purse had  
28 been ramshacked or gone through?

29 A. Again, I can tell you what I saw, and it did not

1 appear that the purse had been ransacked or gone through.  
2 Again, it appeared to be in order, but that is relative to the  
3 way I would keep my purse. It would probably be better  
4 interpreted by you all looking at the picture.

5 Q. I don't believe there is a picture of the inside of  
6 the purse though, is it?

7 A. I don't know if there was one admitted into evidence  
8 or not. But yes, sir; I did take a picture of the interior-- I  
9 mean the contents of the purse.

10 Q. Okay, was this after you removed them from the purse?

11 A. No.

12 Q. Before you removed them?

13 A. Yes. It's as the purse appeared looking over it.

14 Q. Looking down in the purse. Was the purse opened?

15 A. Yes, sir.

16 Q. Okay, and you could see the money before you even  
17 touched it?

18 A. I don't recall if you could see the money before you  
19 touched it. I believe that you could, but I'm not sure.

20 Q. Now when you went up to the Winona Police Department  
21 to examine this brown Pontiac, now Mr. Evans, I believe, asked  
22 you was any damage done inside the glove compartment. You said  
23 what?

24 A. He-- would you ask me the question again?

25 Q. He asked you did you see any damage to the glove  
26 compartment inside the car, and what was your answer?

27 A. I don't really recall the damage. I was not-- again,  
28 I was asked to dust around the glove box and also the window  
29 for latent prints. There is a big difference when, as opposed

1 for me to process a vehicle and for me just to do a specific  
2 request. And my specific request was to dust those two  
3 specific areas for latent prints. So I did not photograph the  
4 car. I did not make diagrams. I did not sketch. I didn't do,  
5 I didn't test anything other than to look for latent prints of  
6 value on the car. So in answer to your question, I do not  
7 recall what the state of the glove box was.

8 Q. But you are a crime scene analyst or an expert of  
9 crime scenes; is that correct?

10 A. I am a crime scene, I am a certified crime scene  
11 analyst; yes, sir.

12 Q. Yet you didn't observe anything around where you were  
13 fingerprinting?

14 A. I didn't say I didn't observe anything.

15 Q. Did you say you did not observe any damage to the  
16 glove department?

17 A. I said I did not document the vehicle as I would if I  
18 was processing the car. Again, I was asked to dust for latent  
19 prints, and that's what I did.

20 Q. Do you know whose car it was?

21 A. No, sir. I do not know whose car it was.

22 Q. All right, you took pictures of a shoe print inside;  
23 I believe it was three of them?

24 A. I took photographs of three different partial  
25 impressions that were inside the furniture store; yes, sir.

26 Q. Okay, have you done any further examination as far as  
27 the prints to match shoes with them?

28 A. I have not done any further examination. Again, my  
29 responsibility is at the crime scene to document and collect

1 the evidence. I do not do any examinations once the evidence  
2 returns to the Crime Lab.

3 Q. All right, did you examine any shoes that were inside  
4 the crime scene such as the ambulance attendants, officers, or  
5 anybody that may have walked in off the street?

6 A. I didn't look at anybody that walked off the street.  
7 I did request that the emergency medical technicians who were  
8 at the scene prior to my arrival that assisted the fourth  
9 victim at the crime scene who was still alive at that time, I  
10 believe; I did request them to come back for me to look at  
11 their shoes to see if there was any similarities, that these  
12 partial impressions, or what looked like impressions, could  
13 have been made by their shoes. So yes, sir; I did.

14 Q. Now you testified there was, appeared to be some type  
15 damage to a brick wall, had chipped the paint or something.  
16 Could you determine if, in fact, a bullet did hit that brick  
17 wall?

18 A. No, sir. I could not determine if that bullet hit  
19 the brick wall.

20 Q. So as far as you know, that defect in that brick wall  
21 could have been there a week before this happened?

22 A. Yes, sir. It could have been there for a week before  
23 this happened.

24 Q. Now you said, did Jody Creel Newman-- Newell come  
25 with you that day?

26 A. Yes, sir; she did.

27 Q. And what is her expertise?

28 A. She is a forensic scientist specializing in forensic  
29 serology.

1 Q. So she didn't do the same thing you did?

2 A. She assisted me; yes, sir. So she did do the same  
3 thing I did.

4 Q. But basically you were the lead investigator, and she  
5 only assisted you?

6 A. That's correct.

7 BY MR. BILLY GILMORE: Court indulge me a  
8 moment.

9 (Defense Counsel confer.)

10 Q. Where you noted the defect, I believe you called it,  
11 in the brick wall, did you look around to see if you could find  
12 fragments of bullet or a whole bullet or a projectile as you  
13 may call it?

14 A. We checked the floor, the linoleum floor for  
15 projectiles and areas immediately around the bodies for any  
16 type of defects. However, with the amount of furniture that  
17 was in that store and also the large area and not knowing how  
18 many projectiles may still be inside of the victims or for that  
19 matter, really even knowing how many times the victims had, how  
20 many different wounds they had received from different bullets,  
21 it was not feasible for us to examine every mattress and every  
22 piece of furniture. So no, sir, I did not do that.

23 Q. As a matter of fact, you didn't find any evidence  
24 that would give you the belief that the Defendant, Curtis  
25 Flowers, was involved in this crime, did you?

26 A. I cannot make that determination. I collected  
27 evidence that may show that he is or he is not, but I myself  
28 cannot.

29 Q. Okay, to your personal knowledge you don't know that

1 Curtis Flowers did any of this?

2 A. That's exactly right. I do not.

3 BY MR. BILLY GILMORE: No further questions.

4 BY THE COURT: Redirect?

5 BY MR. EVANS: Briefly, Your Honor.

6 REDIRECT EXAMINATION BY MR. EVANS:

7 Q. Ms. Schoene, the print cards that you lifted, who did  
8 those end up going to?

9 A. They went to the latent print section of our crime  
10 laboratory. I'm not sure who the analyst was that analyzed my  
11 prints.

12 Q. And of your own personal knowledge, do you have any  
13 knowledge of whether the analyst was able to find any prints of  
14 value out of what you lifted?

15 A. No, sir. I do not.

16 Q. And are you familiar enough with prints to know that  
17 the first step you have to do is find that there are prints of  
18 value before you can compare them?

19 A. That's right.

20 Q. You were asked about one or two weapons. Did you  
21 find anything in the store that would indicate that there was  
22 anything other than just a .380 automatic used?

23 A. No, sir. I did not find anything in the store that  
24 would indicate that.

25 Q. You were also asked about blood spatter. Would it be  
26 difficult in a case where you have four bodies and blood all  
27 over the floor to make any determinations as to blood splatter  
28 that would be of any value?

29 A. Yes, sir. It would be very difficult.



1 Q. If this had been one body and one shot, would it have  
2 been a lot easier to make a determination based on blood  
3 splatter?

4 A. It depends on the circumstances; possibly. But given  
5 the fact that there was so much pooling on this linoleum floor  
6 of blood from the victims, any type of blood spatter pattern  
7 that might have been there at one time was probably obliterated  
8 by the amount of blood that was there.

9 Q. You were also asked about things that were consistent  
10 with a robbery. Would the fact that all of the cash bills were  
11 taken out of the cash drawer in your opinion be consistent with  
12 your crime scene checks of robberies?

13 BY MR. BILLY GILMORE: Your Honor, I object.  
14 She is forming an opinion.

15 BY MR. EVANS: This is in line with his  
16 questioning about the safe, Your Honor. He was  
17 asking if her opinion of what would be consistent and  
18 her findings with robberies.

19 BY THE COURT: That was about the safe.

20 BY MR. BILLY GILMORE: I believe that was the  
21 safe.

22 BY THE COURT: You are talking about the cash  
23 drawer.

24 BY MR. EVANS: Yes, sir.

25 BY MR. BILLY GILMORE: That was the safe, Your  
26 Honor.

27 BY THE COURT: He talked about the safe. She  
28 didn't give an opinion on--

29 BY MR. EVANS: It's the same situation.

1                   BY THE COURT: Well, sustained.

2 BY MR. EVANS:

3           Q. You found no money, no bills in the cash drawer?

4           A. I found no bills in the cash drawer.

5           Q. Do you have any personal knowledge of whether or not  
6 there was any money in the safe at the time of this robbery?

7           A. No, sir; absolutely none.

8           Q. Someone else would have to--

9           A. --no knowledge.

10          Q. --cover that; is that correct?

11          A. (Witness nods her head.)

12          Q. You were also asked about expecting to see someone  
13 disturb items in the safe. Would that also be true if it was a  
14 person that was familiar already with the contents of that  
15 safe?

16          A. Could you ask that again, please.

17          Q. Yes. You were asked by opposing counsel if you would  
18 expect someone on a robbery to disturb the contents of a safe.  
19 I believe you answered you would expect that. Would you still  
20 expect a person that was already familiar with the safe and may  
21 have worked in the store to have to disturb it if they knew  
22 what was already in there?

23               BY MR. BILLY GILMORE: I object, Your Honor.

24               There is no, has been no proof to that.

25               BY MR. EVANS: Wait until the Court rules. .

26               BY THE COURT: You are just asking her to  
27 speculate now. She doesn't--

28               BY MR. EVANS: --Yes, sir; just as opposing  
29 Counsel was allowed to do.

1                   **BY THE COURT:** Yes, sir, but you could have  
2                   objected then, and I would have probably sustained  
3                   that objection. This one is sustained.

4           **BY MR. EVANS:**

5           Q. Do you have any way of knowing from your  
6           investigation how long the killer was in the store?

7           A. No, sir; absolutely none, no way of knowing.

8           Q. Anything from your investigation that would indicate  
9           whether the killer stayed as long as he wanted to or whether  
10           somebody spooked him off?

11                   **BY MR. BILLY GILMORE:** Your Honor, I believe it  
12                   is improper redirect.

13                   **BY MR. EVANS:** No, Your Honor. He covered the  
14                   fact that there was still some money in the purse and  
15                   several other items, and I think it is definitely  
16                   proper redirect.

17                   **BY THE COURT:** Ask the question again.

18           **BY MR. EVANS:**

19           Q. Is there anything in your investigation that would  
20           allow you to know whether a person had plenty of time to stay  
21           in there as long as they wanted to or whether someone scared  
22           them off?

23                   **BY THE COURT:** She can answer that if she knows.

24                   **BY MR. EVANS:** My sole question, Your Honor, is  
25                   is there anything that would allow her to know that.

26           **BY THE WITNESS:**

27           A. I cannot think of anything that would allow me to  
28           know that.

29           Q. Thank you. And opposing Counsel asked you if you

1 checked the shoes of the medical personnel, but he didn't ask  
2 you about whether any of them matched. Did any of the shoes of  
3 the medical personnel match the bloody shoe prints you found in  
4 the store?

5 A. No, sir. None of those shoes matched, nor did the  
6 shoe of the person that found the body, nor did any of the  
7 victims.

8 Q. Thank you. Now as far as your statements about it  
9 not being feasible to search every piece of furniture at that  
10 time, was there anything done after your investigation that  
11 would allow investigators to know exactly how many projectiles  
12 they needed to look for?

13 A. Yes, sir. When I left the scene, I discussed with  
14 the investigators there, went over with them exactly what I had  
15 collected, where I had collected it from, and told them that  
16 they would probably want to keep the store secure until they  
17<sup>u</sup> get the autopsy results back at which time they will probably,  
18 might be able to add up how many bullets we have, how many  
19 casings should be there, and that type thing. So yes, I did  
20 advise the investigators to keep the store secure and go back  
21 after they obtained autopsy results and look for more evidence  
22 if they need to.

23 Q. All right, and did you also point out to the other  
24 investigators there where the bullet close to Ms. Tardy  
25 appeared to have struck the wall?

26 A. I believe so; yes, sir.

27 BY MR. EVANS: Nothing further of this witness,  
28 Your Honor. We would ask that she be allowed to go  
29 back to her duties.

1 BY THE COURT: Any objection?

2 BY MR. BILLY GILMORE: No objection.

3 BY THE COURT: You are finally excused.

4 BY THE WITNESS: Thank you very much.

5 WITNESS EXCUSED.

6 BY THE COURT: Who do you have next?

7 BY MR. HORAN: Dr. Steven Hayne.

8 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
9 THE JURY AS FOLLOWS:)

10 BY MR. HORAN: We are probably going to have a  
11 lengthy discussion on this. We may want to go to  
12 chambers.

13 END OF BENCH CONFERENCE.

14 BY THE COURT: Ladies and gentlemen, this is a  
15 matter concerning this witness that I have to discuss  
16 with the attorneys in chambers. So we are going to  
17 go in there. I will give you a break until we get  
18 that done. Bailiffs, you can take them back to the  
19 jury room.

20 (THE COURT, ALL COUNSEL, THE DEFENDANT AND THE  
21 COURT REPORTER WENT TO CHAMBERS OUT OF THE PRESENCE  
22 OF THE JURY FOR THE FOLLOWING:)

23 BY MR. BILLY GILMORE: Your Honor, we want to  
24 move to exclude. We are presuming at this point that  
25 Dr. Hayne is here to show pictures and describe the  
26 various autopsies, and we would move to exclude any  
27 testimony, any pictures and any evidence involving  
28 the other three bodies other than Bertha Tardy. That  
29 is what this case is about, Bertha Tardy, and I think

1 all it would do is inflame the jury and prejudice the  
2 jury against the Defendant.

3 BY MR. HORAN: Your Honor--

4 BY MR. BILLY GILMORE: There is some pretty  
5 gruesome pictures in there, and, of course, we have  
6 some objections to some of those pictures when the  
7 time comes. But at this point we are going to object  
8 to anything other than Bertha Tardy. Then when we  
9 get into that, then we will look at the ones we want  
10 to limit on that.

11 BY MR. HORAN: Your Honor, first of all, I want  
12 to hand you State's Exhibits-- I don't think you need  
13 to look at the slides, do you?

14 BY THE COURT: Not if they are the same picture.

15 BY MR. HORAN: They have been identified  
16 previously as Exhibits 55, 56, 57 and 58.

17 BY MR. BILLY GILMORE: For identification.

18 BY MR. HORAN: For identification purposes,  
19 which are autopsy photographs of-- some autopsy  
20 photographs of Ms. Tardy, certainly not any--

21 BY MR. EVANS: They are not autopsy photographs  
22 after any incisions.

23 BY MR. HORAN: Incisions; they are just showing  
24 wounds more than anything. I don't see how any way  
25 those could be inflammatory.

26 BY THE COURT: These are all of Ms. Tardy?

27 BY MR. HORAN: That's correct.

28 BY MR. BILLY GILMORE: Your Honor, I don't see  
29 what it has, what probative value they are. They

1 have already introduced the crime scene.

2 BY MR. HORAN: Dr. Hayne is going to be-- it's  
3 going to be able to assist the jury, Your Honor. We  
4 have done this a thousand times before--

5 BY THE COURT: --Well, and the location of the  
6 wound might have something to do about the location  
7 of where the assailant was in there. This is one to  
8 the side of the head. This is S-57. Wait a minute;  
9 I will keep these. I want to ask you about-- that is  
10 obvious what S-57 is. It's a wound over the right  
11 ear, what appears to be a bullet wound over the right  
12 ear. S-56 is--

13 BY MR. HORAN: --it's going to identify an exit  
14 wound, Your Honor.

15 BY THE COURT: That is an exit wound over the  
16 left eye.

17 BY MR. HORAN: Yeah, and it's going to be pretty  
18 important considering the location of previous  
19 testimony, location of the wound and previous  
20 testimony of Ms. Schoene.

21 BY THE COURT: It would be probative of where  
22 the, the angle trajectory of the bullet. S-55 seems  
23 to be the same thing. Do you see any necessity--

24 BY MR. HORAN: --It shows it a little bit  
25 better, Your Honor.

26 YB MR. EVANS: A little different angle.

27 BY THE COURT: Well, do you want to do it  
28 instead of 56? I mean it's the same photo.

29 BY MR. EVANS: We don't know at this point which

1 of those photographs Dr. Hayne would be better able  
2 to describe from.

3 BY THE COURT: Okay. I'm going to let one of  
4 them in. Just get him to make a choice on which one  
5 of them.

6 BY MR. HORAN: Yes, sir.

7 BY THE COURT: Okay. S-58 is a bullet wound  
8 above the right ear. It's a close-up of it, and it  
9 has got some measurements on it. I assume that has  
10 got to do with where, the Doctor is going to testify  
11 about where the wound was and--

12 BY MR. HORAN: --and size--

13 BY THE COURT: --stuff like that. It is  
14 absolutely not gruesome. The Court finds if the  
15 objection to these photographs is that they are  
16 gruesome and would prejudice the jury, if that's your  
17 objection to these photographs, then I'm going to  
18 overrule that objection. Do you have another one?

19 BY MR. JOHN GILMORE: They are also-- I think we  
20 said there is two entrance wounds and two exit wounds  
21 also.

22 BY MR. BILLY GILMORE: You mean two pictures.

23 BY MR. JOHN GILMORE: Right; I'm sorry. Two  
24 pictures of the entrance wounds and two pictures of  
25 the exit wounds. They would be cumulative.

26 BY THE COURT: Well, they are going to-- what  
27 they just said they are going to do is they are going  
28 to pull one of them on the exit wound and use only  
29 one photograph on that.



1 BY MR. JOHN GILMORE: What about the entrance?

2 BY THE COURT: And so I'm going to, in line with  
3 what the State has said, I would say that one of them  
4 is cumulative, and they were going to introduce one  
5 of them. In relation to the other two, I think they  
6 could show the entrance wound, I foresee; I don't  
7 know that, and if it's not that way, we can go into  
8 it then. But it would look like to me that Dr. Hayne  
9 could use -- one of them has a ruler on it, so it is  
10 going to have some, there is going to be some  
11 different testimony about it.

12 BY MR. HORAN: That's correct, Your Honor.

13 BY THE COURT: I don't find that it's  
14 cumulative.

15 BY MR. HORAN: I guess while we are in here the  
16 State--

17 BY MR. BILLY GILMORE: --Of course, the rest of  
18 our motion was dealing with excluding the other  
19 partial autopsies or any and all.

20 BY MR. HORAN: Your Honor, we are not going-- as  
21 the Court is aware, we have not introduced any  
22 photographs of BoBo Stewart at all at this point in  
23 time. We have some autopsy photographs that  
24 certainly are not -- it is similar to the ones  
25 regarding Ms. Tardy. They are not gruesome.

26 BY MR. BILLY GILMORE: Your Honor.

27 BY THE COURT: --But why are they probative?

28 BY MR. EVANS: Your Honor, the only thing that I  
29 would ask is that we be allowed to show one of the

1           least-- well, none of them are gruesome, but one  
2           photograph for identification purposes. The jury has  
3           before it evidence of four bodies, and I think to  
4           show the whole picture to the jury, they should at  
5           least be allowed to see who that fourth person was  
6           that was laying there on the floor that everybody has  
7           been describing to them all day long. We would ask  
8           to show just one picture of him for that sole  
9           purpose, and I think if the Court could allow us to  
10          do that, we would not ask Dr. Hayne to go into any  
11          autopsy photographs of him.

12                 BY MR. HORAN: The only thing that, the purpose  
13          would be to cause and manner of death as well as  
14          whether or not the wound was consistent with the .380  
15          caliber which he is qualified in that field to give  
16          that particular testimony.

17                 BY MR. EVANS: Opposing Counsel has made an  
18          issue, has told the jury on opening statement, the  
19          best I can remember he was going to prove there were  
20          two weapons involved in this thing, and I think--

21                 BY MR. BILLY GILMORE: --I don't think I said  
22          prove. I said there was a possibility.

23                 BY MR. EVANS: At this point I think any  
24          evidence that would tend to show how many weapons  
25          were involved is definitely probative in this case.  
26          All of the wounds are consistent with .380. All of  
27          the wounds are approximately the same areas of the  
28          head which is consistent with the same shooter.  
29          Everything about these killings is consistent, and I

1 think the jury would be entitled to, because  
2 apparently from everything the Defense is showing,  
3 they are going to try to tell the jury and have been  
4 telling the jury that there is more than one gun used  
5 and more than one shooter involved.

6 **BY THE COURT:** First, I pay no attention  
7 whatsoever to opening statements. I tell the jury  
8 that. I don't pay any attention to them. I hope  
9 they don't. It's all based on what he can prove. I  
10 can't anticipate what he is going to prove, and if he  
11 tries to prove something like that, you are entitled  
12 to rebut that. But for me to let stuff in based on  
13 what y'all say in opening statements is just not the  
14 law.

15 **BY MR. EVANS:** He has already--

16 **BY MR. HORAN:** --He already attempted with  
17 Schoene--

18 **BY MR. EVANS:** --He attempted with Schoene to  
19 prove that.

20 **BY THE COURT:** He asked one question concerning  
21 another gun, and she answered that it was not.

22 **BY MR. BILLY GILMORE:** Well, Your Honor, the  
23 State has tested a second gun.

24 **BY MR. EVANS:** No, we haven't.

25 **BY THE COURT:** Well.

26 **BY MR. HORAN:** Your Honor, let me say--

27 **BY THE COURT:** --I don't see how any of that is  
28 going to be relevant to the death of Ms. Tardy unless  
29 Mr. Flowers gets on the stand and--

1 BY MR. HORAN: --Your Honor, one thing that we  
2 need--

3 BY THE COURT: --starts making statements I  
4 don't think he is going to make.

5 BY MR. BILLY GILMORE: Well, Your Honor,  
6 throughout these whole proceedings, of course, we had  
7 a motion filed to consolidate.

8 BY THE COURT: Okay, we have passed that. We  
9 have passed that.

10 BY MR. BILLY GILMORE: I am just bringing this  
11 up. And also, we made motions to exclude any  
12 evidence involving other three crimes if they weren't  
13 consolidated, and we feel like by letting this get  
14 in, it's prejudiced the jury toward the Defendant to  
15 the fact that--

16 BY THE COURT: --Well, of course, just like I  
17 told you when you made that objection and I have told  
18 you consistently through here, you must object  
19 contemporaneously with this introduction of  
20 evidence. You can't just have an objection here and  
21 a continuing objection for the simple reason that the  
22 questioning of these other crimes is admissible in  
23 some cases and inadmissible in others. So you have  
24 to bring it to the Court's attention as to why you  
25 are objecting. You can't just say, I object at the  
26 beginning of it and let it be that way. That's the  
27 reason some of this stuff has already come in about,  
28 about the-- it has come in without objection about  
29 these other crimes. So the Court does not feel that

1           you maintained your objection for that.

2           BY MR. HORAN: Your Honor, can I say one thing?

3           BY THE COURT: Now--

4           BY MR. BILLY GILMORE: --Your Honor, I think  
5           first, we objected to the primary pictures, and these  
6           others were similar or same pictures, and I asked the  
7           Court to consider a continuing objection, but I think  
8           basically, my objection went to all of them because  
9           the original pictures, I think, depict the overall  
10          crime scene involving all the bodies, the blood  
11          pools, whatever, and all the subsequent pictures  
12          depict the same thing. And that's the reason I asked  
13          the Court to entertain a continuing objection because  
14          I don't want to just jump up in front of the jury  
15          every two seconds and make an objection.

16          BY THE COURT: Well, you have to do that  
17          though. That is what the rules are.

18          BY MR. HORAN: Your Honor, let me state  
19          something into the record before the Court rules.  
20          Ms. Schoene was crossed on the fact that, and came  
21          back out on redirect examination that there was  
22          potentially more evidence there than she recovered.  
23          She said you could not, she could not say how many  
24          projectiles were fired, how many, how many bullets  
25          were fired until Dr. Hayne's autopsy had been  
26          completed, and she told the investigators to be aware  
27          of the fact that there may be something left on the  
28          scene. The State anticipates putting another witness  
29          on that came in on somewhere in August and found

1 another projectile. The State, Dr. Hayne is going to  
2 have to be able to testify about not only the wounds,  
3 but what he did or did not recover from the bodies of  
4 the other victims in order to paint a clear picture  
5 to the jury about how many projectiles were  
6 recovered.

7 BY THE COURT: What difference does it make?

8 BY MR. HORAN: It makes a lot of difference  
9 especially when he has crossed Ms. Schoene about  
10 whether or not--

11 BY MR. EVANS: --about whether there are other  
12 guns involved and asking witnesses about other guns.

13 BY MR. HORAN: She said-- and even on  
14 cross-examination Ms. Schoene said you are going to  
15 have to, Dr. Hayne will have to testify-- I mean  
16 after Dr. Hayne's autopsy was completed, then the  
17 investigation could be completed or further determine  
18 whether or not any other projectiles were, in fact,  
19 at the scene.

20 BY MR. BILLY GILMORE: There has already been--

21 BY MR. HORAN: --We anticipate that Dr. Hayne is  
22 going to testify that Brenda Tardy's injury was a  
23 through and through injury.

24 BY THE COURT: What?

25 BY MR. HORAN: A through and through injury.

26 BY THE COURT: Who? Ms. Tardy?

27 BY MR. HORAN: Ms. Tardy. That one projectile  
28 was recovered from Robert Golden's head; one  
29 projectile was recovered from Carmen Rigby's head.

1           The jury needs to know exactly what was recovered  
2           when they got killed there at the scene, what was  
3           left in their bodies and what wasn't left in their  
4           bodies. Otherwise, they are going to be confused  
5           about whether or not there was another weapon used or  
6           where the other projectiles were. We have got to get  
7           out that -- we are not going to go into photographs.  
8           We are just going to -- the only question to Dr.  
9           Hayne is going to be, Did you recover anything from  
10          the body of Carmen Rigby? Yes, I did. Did you  
11          recover anything from the body of Robert Golden?  
12          It's in evidence; we have got photographs of them  
13          laying on the floor in there, Your Honor. Robert  
14          Golden is laying there with two cartridges next to  
15          his head, and he has got two bullet wounds in his  
16          head. One was taken out of his head that had value.  
17          One was fragmented.

18                 I mean we have gone halfway or three quarters of  
19          the way at this point, and now it's going to leave a  
20          gap between what occurred at the scene. It's not  
21          going to paint a complete picture on it. There is no  
22          way. We are not going into the autopsies. I would  
23          like to be able to use the diagrams so Dr. Hayne can  
24          testify about the diagrams that he prepared to  
25          testify about--

26                 **BY THE COURT:** --I don't see where the autopsy,  
27          where going into the autopsy is relevant at all. If  
28          I let you get anything in, it would be the fact that  
29          he recovered these projectiles that were delivered at

1 the Crime Lab. As to angles and all like that, I  
2 don't see where that is relevant.

3 BY MR. HORAN: What about as to caliber?

4 BY THE COURT: Well, I mean all he can do is say  
5 he, he can't say--

6 BY MR. HORAN: --It is consistent with a .380  
7 caliber. He is qualified to do that.

8 BY THE COURT: Oh, he can do that if I let that  
9 in, but as far as going into detail about the  
10 autopsy, I think you can only ask him as to what he  
11 recovered.

12 BY MR. HORAN: What about asking him about were  
13 the wounds on Bertha Tardy, Carmen Rigby, Robert  
14 Golden, and BoBo Stewart consistent with each other?  
15 What harm is that?

16 BY MR. BILLY GILMORE: I don't know. What  
17 relevance is that?

18 BY MR. EVANS: (Talking at the same time as Mr.  
19 Horan) -- exactly one type of gun--

20 BY MR. HORAN: --It's relevant to show that one  
21 type of .380 was used.

22 BY THE COURT: Well, if he is going--

23 BY MR. JOHN GILMORE: --We are not--

24 BY THE COURT: --If he is going to say every one  
25 of them was shot and it looked like it was a .380  
26 that shot then, I mean it was consistent with a .380,  
27 what difference, what relevance could that question  
28 have?

29 BY MR. HORAN: Because they brought up through



1 Ms. Schoene's cross-examination about the second  
2 weapon being used.

3 BY MR. BILLY GILMORE: Well, I bet--

4 BY THE COURT: --No, they have not. They just  
5 asked could it be. She said I don't know.

6 BY MR. BILLY GILMORE: I bet there is probably  
7 another .380 somewhere. I mean I think I have got  
8 one at my house. That is not the only .380 in  
9 existence.

10 BY THE COURT: There is no evidence of any  
11 second weapon at all.

12 BY MR. EVANS: No, sir, and there is not going  
13 to be. But the defense is going to ask every witness  
14 that they can on the stand if it's possible there was  
15 more than one gun there, and which, I guess at this  
16 point we may have to object to that and might be able  
17 to win that objection until they can put somebody on  
18 that can show there is evidence of more than one.

19 BY MR. EVANS: We will just have to keep Dr.  
20 Hayne up here--

21 BY MR. HORAN: --We have already got photographs  
22 of three dead bodies. I mean I don't know what the  
23 harm is in allowing Dr. Hayne -- it is certainly  
24 probative. Certainly, the jury needs to know that.

25 BY MR. JOHN GILMORE: The pictures with the  
26 three dead bodies mainly, from what I understood,  
27 y'all let them in or we let them in because you were  
28 showing the probative value of the casings and the  
29 evidence found around the bodies, and it would be

1 hard for us to keep out evidence at the crime scene.

2 BY MR. EVANS: This is just as important because  
3 we have already proven how many casings were there.  
4 We have got to prove how many projectiles were there.

5 BY MR. HORAN: If it's hard for you to keep  
6 evidence of the crime scene out, then how is it hard  
7 for you to keep out the projectiles that were taken  
8 out of the head of the two persons that were killed  
9 at the crime scene? I mean they are two inches away  
10 from the hulls. They just happened to be in  
11 somebody's head.

12 BY MR. BILLY GILMORE: Your Honor, I think they  
13 are trying to take the same evidence that would be in  
14 four trials and putting it all in one and trying to  
15 get a conviction off of one by using evidence from  
16 all four--

17 BY MR. HORAN: --They are going to be  
18 instructed, Your Honor. It doesn't make any  
19 difference. If it is admissible, if it's probative  
20 and the prejudicial effect is not substantially, does  
21 not substantially outweigh the probative value, it's  
22 admissible. It doesn't make any difference if it's  
23 ten murders.

24 BY THE COURT: I understand that, Mr. Horan.

25 BY MR. HORAN: I mean them saying--

26 BY THE COURT: There are rules that would allow  
27 it to be admissible; there is also one that would  
28 allow it to be inadmissible.

29 BY MR. HORAN: I just don't see at this point

1 where we are with the photographic evidence already  
2 introduced, testimony from Skeeter Robinson that he  
3 ordered autopsies on all of them.

4 BY THE COURT: Well, one thing-- here is the  
5 difference; here is the difference that I see. If  
6 you introduce these bullets from the heads of these  
7 victims and it is, and it's identified as a .380, and  
8 I gather from what y'all tell me the ballistic expert  
9 is going to say these bullets came from the .380 that  
10 supposedly Mr. Flowers stole. That puts it in direct  
11 evidence that he killed all four of them. The rest  
12 of it might be with the hulls, may be one way or  
13 another. But you are not trying, you are not trying  
14 their murder, and that is the problem I have with it  
15 is because it is, it puts the issue of those three  
16 other murders before this jury in trying one of  
17 them. If it was all, if it were all under one  
18 indictment, I wouldn't have any problem with it at  
19 all, but it's not.

20 BY MR. EVANS: Your Honor, may I ask the Court  
21 this. Will the Court, if the Court rules that we  
22 can't go into that, will the Court rule on a motion  
23 in limine that Defense Counsel cannot ask any other  
24 witnesses any questions about how many guns were used  
25 until they put on some proof that there is something  
26 other than one gun used?

27 BY MR. BILLY GILMORE: I think we are entitled  
28 to ask those questions on cross-examination.

29 BY MR. EVANS: Not if we can't get our proof in.

1 BY MR. BILLY GILMORE: I mean the proof is going  
2 to show that they cannot prove whether all these  
3 projectiles came from one gun or two or--

4 BY MR. EVANS: --We can prove close to it--

5 BY THE COURT: --Whoa, whoa; wait a minute now.  
6 If you want to get into that argument now, I'm going  
7 to let it in.

8 BY MR. EVANS: That's the--

9 BY MR. HORAN: --That's the whole argument.

10 BY THE COURT: I understand what y'all's  
11 argument is, but we haven't got to that point yet. I  
12 have got to play this game--

13 BY MR. HORAN: --I got you--

14 BY THE COURT: --you know, when you are playing  
15 chess, you don't move until the other guy moves. So,  
16 you know, y'all bear with me, okay--

17 BY MR. HORAN: --what if they turn their heads?--

18 BY THE COURT: Y'all happen to have the benefit  
19 of knowing everything that is going to happen. I  
20 don't. Okay.

21 BY MR. HORAN: I guess we are going to take it  
22 one step at a time. And if they open the door on  
23 something, it is wide open as far as--

24 BY THE COURT: You know it's going to come in;  
25 if they open that door, it's going to come in on  
26 rebuttal. And that's what I'm saying is if they open  
27 the two door theory, and of course, the only problem  
28 you get with that is you may have to bring Hayne  
29 back.

1 BY MR. EVANS: And then we may have a gap in the  
2 trial if he is testifying somewhere else.

3 BY THE COURT: Well, there are just some  
4 problems I can't deal with.

5 BY MR. EVANS: Yes, sir, and I'm not asking you  
6 to. I am just trying to explain.

7 BY THE COURT: And I tell you, we can cure  
8 that. We can subpoena him before he leaves here or  
9 keep him with us. You know, maybe that won't be a  
10 problem.

11 BY MR. EVANS: I expect it to be one.

12 BY THE COURT: Well, I just--

13 BY MR. HORAN: Am I limited not to even talking  
14 about the other autopsies, even ask him if they are a  
15 small, a caliber .380 wounds or anything, Judge,  
16 since we have got hulls laying next to the body of  
17 Robert Golden?

18 BY THE COURT: Well, of course, you know, you  
19 have got the hulls next to the body.

20 BY MR. HORAN: I understand that.

21 BY MR. BILLY GILMORE: Which that is, you know.

22 BY THE COURT: You just want more, don't you,  
23 Kevin?

24 BY MR. BILLY GILMORE: We objected to that to  
25 start with and, of course, like I say, I made a  
26 continuing objection although the Judge said, you  
27 know, he is not listening to continuing objections.

28 BY THE COURT: Well, I'm not because the rules  
29 say this. These things can come in under all kind of

1 different ways. They can come in under 403 (b).  
2 They can come under, you know, there are all kind of  
3 ways that these things -- it may be relevant here and  
4 not relevant there. It may be, it may be not  
5 relevant now and terribly relevant if y'all open it  
6 up on cross-examination, and it comes in on  
7 rebuttal. So you have to make those objections at  
8 that time and specify what your objections are. On  
9 the general objection, the objection that y'all made  
10 before trial in that you couldn't have the evidence  
11 of other crimes where he had not been convicted of  
12 other crimes, they come in under Brock as a general  
13 on Brock v. State. They come in generally that way.  
14 But even within Brock, there are limitations as to  
15 what comes in, and you have to make those specific  
16 objections at that particular time. You can't make  
17 a broad general objection that will cover all the  
18 angles, and that is the point I'm trying to make.

19 BY MR. HORAN: Man, see the problem I have,  
20 Judge, is if we get to that point, I have got Steve  
21 Byrd I'm going to put on, and then I have got to get  
22 back to Hayne before I can put Byrd back on again a  
23 second time.

24 BY THE COURT: Who is Steve Byrd?

25 BY MR. EVANS: He is the firearms--

26 BY MR. HORAN: --ballistics expert.

27 BY THE COURT: Well, I realize it's a problem  
28 with the proof, but it's also, it creates a problem  
29 with the trial, and I just can't cure all problems.

1 And I think allowing it at this point in the trial  
2 that it's not relevant, and I think it would be  
3 prejudicial, and I think I'm going to make a 403  
4 ruling that we cannot go into the autopsies of the  
5 other three people or to the projectiles that were  
6 found on them with the understanding that if it gets  
7 opened up, then--

8 BY MR. HORAN: --Can I ask--

9 BY THE COURT: --If they open up the two gun  
10 theory, and that's my ruling now. Now let's rule on  
11 Mr. Evans' motion in limine.

12 BY MR. EVANS: And further to that motion--

13 BY THE COURT: --You have to have some good  
14 faith basis to ask those questions, Mr. Gilmore. Are  
15 you going, will you be in a position to tell me that  
16 you have proof that will support the two gun  
17 theory?

18 BY MR. BILLY GILMORE: I think we are entitled  
19 to ask if they know for sure it was one gun or two  
20 guns.

21 BY THE COURT: Not unless you have got some  
22 proof to that effect.

23 BY MR. JOHN GILMORE: I believe their own  
24 ballistic reports are going to show that one of the  
25 guns that they have in evidence and tested, it could  
26 or could not have been the gun that was fired at the  
27 crime scene.

28 BY THE COURT: If y'all have a two gun theory  
29 though, then that makes what he wants admissible.

1 BY MR. BILLY GILMORE: Well, even if it's  
2 admitted, I don't think ballistics can match up any  
3 of those bullets anyhow.

4 BY MR. HORAN: Well, they don't have to  
5 necessarily match to make it probative, Your Honor,  
6 or admissible.

7 BY MR. BILLY GILMORE: Well, I think it does.  
8 I mean--

9 BY MR. HORAN: --No, it doesn't--

10 BY MR. BILLY GILMORE: --all they are doing is  
11 trying to show there is some bullets, but they cannot  
12 be identified as coming from any gun, I mean any  
13 particular gun.

14 BY MR. HORAN: It becomes relevant, Your Honor,  
15 at the point in time if they try to pull out a  
16 different part of the ballistics examinations and our  
17 ballistics expert can exclude that from this  
18 particular evidence, then it becomes real relevant,  
19 and that's what I believe the expert is going to be  
20 able to do. Our expert is going to testify that he  
21 is, he is that close to finding that these two were  
22 fired from the gun almost to the point of being to a  
23 reasonable scientific certainty, but he cannot say  
24 that because-- I mean he can't say--

25 BY THE COURT: --which is what they testify to  
26 all the time.

27 BY MR. HORAN: Right. I mean they say--

28 BY THE COURT: --It boils down to this, man.  
29 You have got to pick or choose.



1 BY MR. BILLY GILMORE: He has only got one  
2 bullet that he can actually identify.

3 BY MR. HORAN: Two.

4 BY MR. BILLY GILMORE: And he is comparing it--  
5 well, he has got one that he said maybe.

6 BY MR. HORAN: Oh, you are talking about from  
7 the scene.

8 BY MR. BILLY GILMORE: Right. And the other  
9 bullet, I'm not sure -- you know, they have got  
10 another bullet to compare, but where did it come  
11 from?

12 BY THE COURT: Well, of course, that is subject  
13 to -- I will have to hear all that testimony. You  
14 will just have to object at that time. He is also  
15 going to be qualified as an expert, so he is entitled  
16 to give his opinions. That gives him more leeway  
17 than everybody else. Now the question is y'all have  
18 got to pick or choose what you are going to do  
19 because their evidence is either admissible or  
20 inadmissible depending on, I mean--

21 BY MR. BILLY GILMORE: --Well, let me ask this.  
22 You are talking about a bullet out of Golden and a  
23 bullet out of Rigby.

24 BY MR. HORAN: Rigby.

25 BY MR. BILLY GILMORE: Are either one of those  
26 bullets can be, either one of them be identified?

27 BY MR. HORAN: They cannot-- yeah, they can be  
28 identified.

29 BY MR. BILLY GILMORE: They cannot.

1 BY MR. HORAN: They can be identified.

2 BY MR. BILLY GILMORE: I mean as far as coming  
3 from the same gun, they cannot.

4 BY MR. EVANS: The question is are y'all going  
5 to try to claim--

6 BY THE COURT: --Well, can they be identified as  
7 a .380--

8 BY MR. EVANS: Yes, sir--

9 BY MR. HORAN: Of course--

10 BY THE COURT: --it is relevant--

11 BY MR. HORAN: --and they can almost be  
12 positively, and almost positively--

13 BY THE COURT: --That makes it a circumstantial  
14 as to whether it came out of that gun. I mean that  
15 is a conclusion and an inference that the jury could  
16 draw. That is a question of fact for the jury, not  
17 for me, if he can identify it as the same caliber.

18 BY MR. BILLY GILMORE: But, Your Honor, I might  
19 ask for some direction. If he gets up there and says  
20 it comes out of a .380, then it is obvious I am going  
21 to ask him, Do you know what .380 gun did it come out  
22 of?

23 BY MR. HORAN: Well, on redirect--

24 BY MR. BILLY GILMORE: --He can't answer it; he  
25 doesn't know. And I have got to ask that question.

26 BY MR. EVANS: Then on redirect he has opened  
27 the door.

28 BY MR. BILLY GILMORE: I don't think so.

29 BY THE COURT: No, I don't think he would with

1           that question.

2           BY MR. HORAN: But that allows me to qualify his  
3 answer as to these other--

4           BY THE COURT: --That doesn't make a two gun  
5 theory.

6           BY MR. HORAN: I understand that, but it allows  
7 me to qualify--

8           BY THE COURT: --I guess it makes a two .380  
9 theory.

10          BY MR. HORAN: It allows me to qualify his  
11 answer as to these particular other projectiles and  
12 another projectile that has got the same class  
13 characteristics.

14          BY MR. BILLY GILMORE: But you have no gun to  
15 match it with.

16          BY MR. EVANS: That's a complete different  
17 issue.

18          BY THE COURT: We are off the point, I think.

19          BY MR. HORAN: That is a jury issue.

20          BY MR. BILLY GILMORE: The main thing, I don't  
21 want the jury to have the impression put on their  
22 mind that this one gun killed everybody.

23          BY MR. EVANS: That is exactly the impression  
24 that is going to be on their mind.

25          BY MR. BILLY GILMORE: But the proof--

26          BY THE COURT: --I think that impression is  
27 probably already there.

28          BY MR. BILLY GILMORE: Well, it probably is, but  
29 the proof is not there showing it.

1                   BY THE COURT: Well, there is enough proof there  
2 they could draw the inference. There is no absolute  
3 proof yet, but they could, but there was hulls laying  
4 all over the place. They could sure draw that  
5 conclusion.

6                   BY MR. BILLY GILMORE: Of course, I am sure when  
7 it gets down to the ballistics expert, he is going to  
8 show that there was more than one kind of casing  
9 laying around too.

10                  BY MR. HORAN: Judge--

11                  BY THE COURT: --Of course, I am anticipating  
12 what he is going to say. I don't know what he is  
13 going to say.

14                  BY MR. HORAN: Judge, based on that, I have got  
15 another area that is along the same lines. Can I not  
16 ask Dr. Hayne, which he is qualified to answer this  
17 question, when he performed the autopsies on all four  
18 of these, some opinion that they were killed at the  
19 same time or they were immobile after they were  
20 shot? I mean he can testify to that because that is  
21 what they are going to get into -- the two gun  
22 theory, and they are going to save all that until the  
23 end. I think he ought to be able to testify that--  
24 I'm not talking about going into the pictures--

25                  BY THE COURT: --What are you asking me?

26                  BY MR. HORAN: For Dr. Hayne to be able to  
27 testify that he did the autopsies on all four.  
28 Skeeter Robinson has already testified about that.

29                  BY THE COURT: Well, I don't have any problem

1 with him testifying to that.

2 BY MR. HORAN: And did you determine cause and  
3 manner of death--

4 BY THE COURT: --And I don't have any problem  
5 with him being able to testify that they all died, if  
6 he can testify to this, at approximately the same  
7 time.

8 BY MR. HORAN: Right.

9 BY THE COURT: If he can testify to that.

10 BY MR. EVANS: And the quickness of proximal  
11 death because I know from what-- and again, we are  
12 getting into stuff that is real confusing. But from  
13 what opposing Counsel has indicated, they are going  
14 to try to show that there had to be two people in  
15 there because of so many people killed. And I think  
16 the length of time it took for these injuries to kill  
17 the different people is going to definitely be  
18 probative to show that they would not have--

19 BY MR. HORAN: --They were immobilized--

20 BY MR. EVANS: --They would have been  
21 immobilized--

22 BY MR. HORAN: --at the time they received the  
23 injuries--

24 BY MR. EVANS: --immediately because of where  
25 their injuries were.

26 BY MR. BILLY GILMORE: Well, you have got all  
27 sorts of proof showing that BoBo was alive.

28 BY THE COURT: As I have already said, I think,  
29 the problem I am faced with, I think y'all's argument

1 is correct on rebuttal. But I think until they lay  
2 the predicate for that defense, that it is  
3 prejudicial. That is my opinion. So at this point  
4 in time in the case, I'm not going to allow the  
5 testimony about the bullets retrieved from the other  
6 three victims, and I'm not going to allow detailed  
7 discussion of the autopsies of--

8 BY MR. HORAN: Yes, sir.

9 BY THE COURT: --but I will allow-- of the  
10 autopsy of those three people, but I will allow the  
11 State to inquire--

12 BY MR. HORAN: As to some of his findings?

13 BY THE COURT: To inquire to the fact that he  
14 performed the autopsy on those three; that the  
15 opinion, if he can give this, the opinion that they  
16 died instantly; and if he can give this, the opinion  
17 that all of them died at about the same time.

18 BY MR. BILLY GILMORE: Well, Your Honor, the  
19 testimony has already been introduced--

20 BY THE COURT: --but they are going to be --  
21 well, that would only be to two of them.

22 BY MR. HORAN: Well, BoBo's would have to be  
23 whether or not he would regain consciousness or if he  
24 would become immobilized at the point in time he  
25 received those injuries.

26 BY MR. GILMORE: Your Honor, the proof has  
27 already been put in at the scene by several witnesses  
28 that three were dead, and one was alive. I think we  
29 are beating a dead horse here. They have already got

1 proof--

2 BY THE COURT: --But they were not, you know,  
3 they were found, and there is no-- there has been no  
4 testimony yet as to how long they had been there  
5 before Mr. Jones found them. In other words, the  
6 theory could be that folks came in and out, two or  
7 three folks came in and out of there before that. So  
8 I think it is relevant for that purpose.

9 BY MR. EVANS: Your Honor, one more issue, and  
10 this, I may be wasting my time, but I'm trying, and  
11 of course, we are going to follow the Court's ruling  
12 regardless. But I am trying to find a way of  
13 following the Court's ruling and also keeping from  
14 having to bring Dr. Hayne back up here later. Would  
15 the Court have any problem - and I might could even  
16 ask opposing Counsel; they might could agree. If we  
17 could just introduce these two projectiles that were  
18 recovered, introduce them into evidence, not even  
19 tell where they came from as far as Dr. Hayne  
20 describing his removal, then if they open the door,  
21 we could let Steve Byrd testify about these  
22 projectiles without having to bring Dr. Hayne back.

23 BY THE COURT: I don't see any problem with  
24 that. But I mean what he is saying is--

25 BY MR. HORAN: --I will have to lead him a  
26 little bit on that--

27 BY THE COURT: --they are-- no, they would be,  
28 they would -- I think what we could do--

29 BY MR. BILLY GILMORE: --you mean more than you

1 normally do--

2 BY THE COURT: --they could be marked for  
3 identification. If they become relevant, then I  
4 would admit them through Steve Byrd, or you would ask  
5 that they be admitted through Steve Byrd. And that  
6 way we would not, that would prohibit any prejudicial  
7 effect of where they came from or anything else  
8 unless y'all opened the door. If you opened the  
9 door, I would be letting Hayne testify anyhow.

10 BY MR. BILLY GILMORE: Have you not already  
11 marked them for I.D.?

12 BY MR. EVANS: For identification purposes.

13 BY MR. BILLY GILMORE: One other thing I would  
14 like to bring--

15 BY THE COURT: --Do you have any objection to  
16 that?

17 BY MR. BILLY GILMORE: No, sir.

18 BY THE COURT: Okay.

19 BY MR. BILLY GILMORE: One other thing I would  
20 ask the Court to do; of course, we have objected to  
21 the slides, and the Court has let them in. But I  
22 would ask that the Court limit the time of these  
23 bloody scenes be left on the wall even after Mr.  
24 Evans or Mr. Horan goes on to other testimony, it is  
25 still plastered on the wall.

26 BY THE COURT: They have done pretty good about  
27 not doing that, and I have been conscious of that.

28 BY MR. BILLY GILMORE: One scene was there for  
29 some time--



1                   BY THE COURT: --If it gets out of hand, I will  
2 look at it, but I am aware of that, and I have  
3 noticed it, and I find that they have not been unduly  
4 left on the wall. I will caution everybody that is  
5 going to use slides that when you move on past, when  
6 you get moving to something else, take them off. But  
7 I note for the record that they have done that.

8                   BY MR. HORAN: Your Honor--

9                   BY THE COURT: --I have got one thing I want to  
10 note for the record that I'm not sure that I did when  
11 we picked the jury, and this will be in the middle of  
12 it so they may never find it. I want the record to  
13 reflect though that the jury sitting on the case was  
14 picked from the original venire. It was not picked  
15 from-- none of the additional 100 jurors that were  
16 summonsed are sitting on this jury.

17                  BY MR. HORAN: Your Honor, along those lines, I  
18 would like to move that a clean jury list be  
19 introduced in evidence that indicates the race of all  
20 jurors. I don't know that you did that.

21                  BY THE COURT: Yeah. No, I did not, and we do  
22 need to do that. The Court Reporter and I will see  
23 that that gets done.

24                  BY MR. HORAN: I hate to object; I know you  
25 don't like motions in limine, but I think it is  
26 improper for Counsel for the Defendant to ask every  
27 witness before they sit down, "Do you know anything  
28 else about this case?" I mean that is not a fact  
29 specific question. The State would move in limine

1           that they-- that is like asking somebody did you take  
2           a polygraph. I mean that is just not admissible,  
3           Your Honor. It may be a lot of people may blurt out  
4           something that is--

5           BY MR. BILLY GILMORE: --Well, they are on  
6           cross.

7           BY MR. HORAN: Well, that is not--

8           BY THE COURT: --It has to be, it can't just be  
9           a fishing expedition. You have got to have some  
10          point to the question. If you ask them that  
11          question, they may blurt out something that was  
12          totally inadmissible like that before the Court can  
13          rule on that. And if you ask the-- there is no way,  
14          there is no way for them to object to that question  
15          other than what he is doing now, and there is no way  
16          for me to rule on it because I couldn't possibly  
17          anticipate what the answer would be by the question.  
18          If you ask a specific question, then I have got some  
19          basis to make a ruling. So I sustain that  
20          objection.

21          BY MR. EVANS: Your Honor, one more motion in  
22          limine I was going to make later, but let me go ahead  
23          and get it out of the way. Just about every witness  
24          that I have talked to that the Gilmores have talked  
25          to, they have asked their personal opinion of whether  
26          the Defendant committed the murders. And I would  
27          move in limine that they not be allowed to ask any  
28          witness their personal opinion of who committed the  
29          murders in this case. Just as we would not be

1           allowed to ask the officers or any of our main  
2           witnesses their opinion as to whether the Defendant  
3           committed this crime, we would ask that they not be  
4           allowed to ask anyone their opinion as to whether the  
5           Defendant committed this crime.

6           BY MR. JOHN GILMORE: Your Honor, when we are  
7           interviewing the witnesses, they are not before the  
8           jury, and we wouldn't do that on the stand.

9           BY THE COURT: Okay, well, the only way it could  
10          come in to begin with would be as a lay opinion, and  
11          as the District Attorney already knows, lay opinions  
12          to me mean that you have got to have some foundation;  
13          you have got to have some basis for that opinion.  
14          And it just would be totally irrelevant unless you  
15          can-- if you get ready to do that and you want me to  
16          have another hearing on it, I will be glad to do it,  
17          but I don't see of any, I don't know of a situation  
18          where that would be admissible.

19          BY MR. BILLY GILMORE: Your Honor, we haven't  
20          done that in this trial. Of course, we have been  
21          limited in our investigation where the State has had  
22          broad investigation--

23          BY THE COURT: --Well, I don't know about that.

24          BY MR. BILLY GILMORE: We are entitled--

25          BY THE COURT: --Six months and all the  
26          witnesses' names. Anyhow, that is neither here nor  
27          there.

28          BY MR. BILLY GILMORE: We are entitled to get  
29          street opinions and get a feel of the general

1 public.

2 (NOTE: DURING THIS RECESS, THE COURT REPORTER  
3 GAVE HER JURY LIST TO THE CLERK TO BE FILED IN THE  
4 CAUSE. THAT LIST CONTAINED INDICATIONS OF RACIAL  
5 MAKEUP OF THE JURY PANEL AS WELL AS INDICATIONS OF  
6 WHICH JURORS WERE CHALLENGED FOR CAUSE AND THE  
7 PEREMPTORY STRIKES.)

8 (WHEREUPON THE COURT AND ALL COUNSEL AND THE  
9 DEFENDANT RETURNED TO OPEN COURT BUT BEFORE THE JURY  
10 WAS BROUGHT BACK IN THE COURTROOM, THERE WAS THE  
11 FOLLOWING:)

12 BY MR. HORAN: I am going to have to talk to him  
13 just for a minute, Judge, and let him know.

14 BY THE COURT: Do you want to go back there and  
15 do it?

16 BY MR. HORAN: Yes, sir.

17 (Mr. Horan confers with Dr. Hayne.)

18 (THE WITNESS WAS SWORN BY THE COURT, AND THEN  
19 THE JURY ENTERED THE COURTROOM.)

20 DR. STEVEN TIMOTHY HAYNE,  
21 a white male called to testify as a witness by the State of  
22 Mississippi, having first been duly sworn, testified as  
23 follows, to-wit:

24 BY THE COURT: State your name for the record  
25 please, sir.

26 BY THE WITNESS: Steven Timothy Hayne, Your  
27 Honor.

28 BY MR. HORAN: May I proceed, Your Honor?

29 BY THE COURT: Yes, sir.

1     DIRECT EXAMINATION BY MR. HORAN:

2             Q.    You are Dr. Steven Hayne?

3             A.    Yes, sir.

4             Q.    And Dr. Hayne, are you employed anywhere?

5             A.    I am, sir.

6             Q.    Where are you employed?

7             A.    I work as the senior pathologist at Rankin Medical  
8 Center. I also serve as the Medical Director of the Renal  
9 Laboratories, and I serve as a state pathologist with the  
10 Department of Public Safety.

11            Q.    What is the field of pathology?

12            A.    Pathology is essentially divided into two main  
13 areas: Anatomic pathology and clinical pathology. Anatomic  
14 pathology is the making of diagnoses from tissues removed from  
15 a patient commonly in an operating room submitted to us to  
16 determine the presence or absence of disease, what type of  
17 disease, and what clinical significance that disease presents  
18 to the patient. We essentially assist the surgeons and other  
19 surgical specialty physicians in taking care of patients.

20                   In addition, there is a second general area of  
21 pathology that is clinical pathology, and that is essentially  
22 running a laboratory. It may be a hospital based laboratory;  
23 it may be a reference based laboratory, and I work in both of  
24 those types of laboratories covering areas of blood banking,  
25 urinalysis, identification of infectious diseases; also, in  
26 chemistry, special chemistry, toxicology as well as the other  
27 divisions within that laboratory, again to assist the primary  
28 care physician, a physician who is responsible for taking care  
29 of the patient to choose correctly and intelligently the types

1 of lab tests necessary, and to assist in interpreting the  
2 results of those lab tests. Essentially, a pathologist is a  
3 hospital based physician, most commonly, that assists our other  
4 physicians while those physicians take care of patients.

5 In addition, there are subspecialties within the  
6 field of pathology, and I practice in one of those sub-  
7 specialties.

8 Q. What would that subspecialty be, Dr. Hayne?

9 A. Forensic pathology, sir.

10 Q. Does-- strike that. What is forensic pathology?

11 A. It is a subdivision, a specialty, subspecialty within  
12 the general field of pathology, and specifically, it attempts  
13 to address and answer the two basic questions concerning the  
14 cause and manner of death of an individual; the cause of death  
15 being the medical reason that person died, whether it be from a  
16 heart attack or a stab wound or cancer or literally thousands,  
17 if not tens of thousands of other possibilities. The manner of  
18 death, though it may be just as difficult to come to a  
19 conclusion, only encompasses six possibilities in this state as  
20 well as other jurisdictions. Those would include suicide,  
21 accident, homicide, natural, and some cases pending until  
22 additional information is present so as to come to a  
23 conclusion, and in rare cases undetermined when one cannot come  
24 to a final conclusion.

25 Q. Dr. Hayne, what education do you have, and what  
26 practical background do you have that qualifies you to practice  
27 in the subspecialty of forensic pathology?

28 BY MR. BILLY GILMORE: Your Honor, we would  
29 stipulate to the qualifications of Dr. Hayne as an

1 expert in his field.

2 BY THE COURT: Do you accept that stipulation?

3 BY MR. HORAN: I accept the stipulation as to  
4 forensic pathology, Your Honor.

5 BY THE COURT: The Court accepts him as an  
6 expert in the field of forensic pathology.

7 BY MR. HORAN:

8 Q. Dr. Hayne, I want to direct your attention to, I  
9 believe, July the 17th. I may be off a day one way or the  
10 other. Can you tell me whether or not you received a request  
11 from the Grenada County Coroner, Skeeter Robinson, to conduct  
12 an autopsy - he was subbing in for Carl Oliver, I believe - on  
13 an individual that you came to know as Bertha Tardy?

14 A. Yes, sir. In fact, it was on the late hours of the  
15 16th of July, and the request was received from the Deputy  
16 Coroner Medical Examiner Investigator of Grenada County acting  
17 in and behalf and for the coroner's office of Montgomery  
18 County.

19 Q. And was that on the body of Bertha Tardy?

20 A. It was, sir.

21 Q. Would you give the Court and the jury the benefit of  
22 what steps you took to complete the request?

23 A. I conducted a post mortem examination or an autopsy  
24 so as to determine the cause of death and the manner of death  
25 and collect the appropriate evidence as necessary in the case.  
26 The examination included, of course, one, discussion of the  
27 case with the submitting officer, Mr. Robinson, followed by an  
28 external examination; that is, looking at the external surfaces  
29 of the body, documenting the presence or absence of any



1 significant injury or disease or medical intervention, whether  
2 it be new or old, as well as the collection of evidence on the  
3 external surfaces of the body and photographic documentation.

4 In addition, a second step was initiated, and that  
5 was an internal examination looking at the internal body organs  
6 to include the organs of the chest, the abdomen, as well as the  
7 head to determine again if there was any disease or injury,  
8 whether it be new or old, and if it impinged upon the cause and  
9 manner of death. Evidence was also collected during the course  
10 of that part of the examination.

11 It was subsequently followed by a microscopic review,  
12 using a microscope, looking at the tissues. The appropriate  
13 evidence was transferred under custody to the Mississippi State  
14 Crime Lab, and a formal report was initiated by my office and  
15 me indicating the cause of death of Mrs. Tardy as well as the  
16 manner of death of Mrs. Tardy and the underlying causes of  
17 death as well as evidence of any disease or old injury.

18 Q. Would you give the Court and the jury the benefit of  
19 your external examination of the body of Bertha Tardy, please,  
20 sir?

21 A. Upon arrival, Ms. Tardy was a late middle-aged white  
22 female appearing approximately the quoted age of 59 years. She  
23 stood 5 foot, 6 inches in height and had a body weight of 140  
24 pounds. She was essentially clothed, and there was a large  
25 amount of blood located over the hair and the face. Upon  
26 removing the clothing and washing the body and the collection  
27 of evidence on the external surface of the body, there were  
28 significant injuries located to the head area to include an  
29 entrance gunshot wound located over the right temple above and



1 slightly behind the right ear, and there was an exit gunshot  
2 wound located on the lateral side of the left orbit, the bony  
3 structure that holds the left eye. There was also bruising  
4 about the eyes produced by the gunshot itself.

5 On the internal examination, it was confirmed that  
6 those injuries were produced by the gunshot wound and that  
7 there were specific fractures of what are called the orbital  
8 plates, the small bony plates overlying the eyes.

9 Q. Dr. Hayne, would it assist you in describing these  
10 injuries if you were able to use photographic evidence to show  
11 to the jury?

12 A. It would, sir.

13 BY MR. HORAN: Your Honor, at this time I want  
14 to hand Dr. Hayne some photographs and accompanying  
15 slides with the Court's permission.

16 BY THE COURT: Have you shown them to Defense  
17 Counsel?

18 BY MR. HORAN: Yes, sir. They saw them in  
19 chambers. Y'all want to look at them again?

20 BY MR. JOHN GILMORE: No.

21 BY MR. HORAN:

22 Q. I hand you State's Exhibit 55 and 55A, 57 and 57A and  
23 58 and 58A. Would you tell Court and the jury whether or not  
24 you can identify those particular photographs, please, sir?

25 A. Yes, sir. I can.

26 Q. And would you look at the accompanying slides that  
27 are identified as 55A, 57A, and I am thinking 58A, and tell me  
28 whether or not you can identify what those slides show?

29 A. Yes, sir. They are projection slides obviously made

1 from the photographs that I took during the course of the  
2 autopsy.

3 Q. Okay, those are your photographs, and those slides  
4 are projection slides of those particular photographs?

5 A. Yes, sir.

6 Q. Is that correct? Do they fairly and accurately  
7 depict the way you saw Ms. Tardy on the late hours of July the  
8 16th, 1996, when you performed your autopsy upon her body?

9 A. Yes, sir.

10 BY MR. HORAN: Your Honor, at this time I move  
11 for their introduction.

12 BY MR. BILLY GILMORE: Your Honor, we are going  
13 to object to the slides. I don't believe that Dr.  
14 Hayne made those slides. He only made the pictures.

15 BY THE COURT: Dr. Hayne, is your testimony that  
16 they are the same?

17 BY MR. HORAN: He did, Your Honor.

18 BY THE COURT: Okay. The objection is  
19 overruled.

20 (PHOTOGRAPHS AND CORRESPONDING SLIDES PREVIOUSLY  
21 MARKED AS STATE'S EXHIBITS S-55, S-55A, S-57, S-57A,  
22 S-58, AND S-58A FOR IDENTIFICATION WERE NOW ALL  
23 RECEIVED IN EVIDENCE.)

24 BY THE COURT: What's the numbers?

25 BY MR. HORAN: 55, 57, and 58.

26 (Slides S-55A, S-57A, and S-58A were put in the  
27 slide projector.)

28 BY MR. HORAN: Your Honor, I would like to have  
29 the witness step down if I could, please.

1                   BY THE COURT: You may. Y'all try to stand the  
2                   best you can where you don't block the jury, okay?

3                   BY MR. HORAN: I'm going to try to get them in.  
4                   I'm not too good at this.

5 BY MR. HORAN:

6                   Q. Dr. Hayne, you can push that forward button, I  
7                   believe. Dr. Hayne, would you please describe -- you may have  
8                   to step back after you focus that so all the jurors can see.

9                   (NOTE: Witness is holding the slide projector  
10                  controller and the laser pointer.)

11                  Q. Please describe what that slide shows, and I believe  
12                  that is 55A.

13                  A. State's 55A shows the face of Mrs. Tardy.  
14                  Specifically, it shows an exit gunshot wound located  
15                  immediately lateral to the left eye.

16                  Q. How did you come to the conclusion, Dr. Hayne, that  
17                  that was, in fact, an exit gunshot wound?

18                  A. It was documented during the course of the internal  
19                  examination, tracking the bullet wound through the brain as it  
20                  traveled from the right side of the head, subsequently exiting  
21                  the left front side of the face.

22                  Q. In the course-- how many years have you been  
23                  conducting autopsies in the State of Mississippi?

24                  A. In the State of Mississippi, eleven years, sir.

25                  Q. And you have had an occasion to observe gunshot  
26                  wounds to the skull and other parts of the body?

27                  A. Yes, sir, in approximately 2,500 deaths from gunshot  
28                  wounds and approximately eight to ten thousand individual  
29                  gunshot wounds.

1 Q. Go to the next slide, please, sir.

2 A. (Witness complies.)

3 Q. Please describe what this particular slide shows, and  
4 I believe this is 57A?

5 A. 57A shows the entrance gunshot wound located slightly  
6 above and behind the right ear. The entrance gunshot wound was  
7 located at a distance of approximately two inches above and  
8 slightly behind the right ear. It was also found below the top  
9 of the head at a distance of approximately three and a quarter  
10 instances, and the distance from the entrance gunshot wound to  
11 the back of the head measured approximately three and three  
12 quarters inches.

13 Q. Were you able to determine whether or not this  
14 gunshot wound was from close range or a distant wound?

15 A. It was a distant gunshot wound, sir. There was no  
16 tatooing, no smudging, no flame injury and no powder residue in  
17 the wound track, on the skin surface, or the hair.

18 Q. Is a distant gunshot wound the classification that  
19 you use in the field of pathology?

20 A. Yes, sir. They are arbitrarily divided into contact,  
21 near contact, and distant.

22 Q. And distant wound would constitute how far from the  
23 actual wound?

24 A. It would indicate that the muzzle of the weapon was  
25 no closer than approximately two feet from the entrance gunshot  
26 wound site. That is the gunshot wound site to the right temple  
27 of Mrs. Tardy.

28 Q. That wound that you observed on the head of Ms.  
29 Tardy, is it consistent with a .380 caliber pistol?

1           A.    It would be consistent with that, sir.

2           Q.    How did you come to the conclusion that that was, in  
3 fact, the entrance wound and the other wound was, in fact, the  
4 exit wound?

5           A.    On the internal examination it was quite obvious.  
6 Also, on the external examination it also had characteristics  
7 consistent with an entrance gunshot wound in that the wound  
8 itself is slightly ovoid which would match the trajectory  
9 pattern with the exit gunshot wound, and there was a small  
10 incomplete abrasion ring located on the posterior aspect of the  
11 entrance gunshot wound on the right temple where the bullet  
12 slid across the skin's surface producing a scraping pattern  
13 also lining up with the exit gunshot wound. And it was  
14 subsequently confirmed on the internal examination in that the  
15 table of the bone was internally beveled.

16          Q.    Go to the next slide, please, sir.

17          A.    (Witness complies.)

18          Q.    Would you please describe to the jury what this  
19 particular slide shows, and I believe it has been identified  
20 and introduced as 58A?

21          A.    State's 58A shows the entrance gunshot wound. The  
22 hair has been shaved exposing the entrance wound itself, and  
23 the wound is located at a distance of approximately two inches  
24 from the ear. It's located at a distance of approximately  
25 three and a quarter inches below the top of the head and a  
26 distance of approximately three and a half to three and three  
27 quarters inches forward from the back of the head.

28          Q.    Thank you. You may return back to your seat.

29          A.    (Witness resumes witness stand.)

1 Q. Dr. Hayne, the injury that you observed to Bertha  
2 Tardy's head, was it lethal?

3 A. It was, sir.

4 Q. And after an individual received that particular  
5 wound, would you expect him to be mobile in any way or  
6 ambulatory in any way?

7 A. I would expect due to the characteristics of the  
8 wound that that individual would be immediately immobilized.

9 Q. Okay. Dr. Hayne, did you have an occasion to conduct  
10 an autopsy on other individuals, more particularly, Robert  
11 Golden and Carmen Rigby, on that particular day?

12 A. I did, sir.

13 Q. And eventually did you do an autopsy on Derrick  
14 "BoBo" Stewart?

15 A. I did, sir.

16 BY MR. BILLY GILMORE: Your Honor, I'm going to  
17 object to going into the other autopsies. This is  
18 only one case involved here involving Bertha Tardy's  
19 murder.

20 BY THE COURT: The objection is noted. I make  
21 the same ruling that I made in chambers concerning  
22 what he can testify to in that regard.

23 BY MR. HORAN: Yes, Your Honor.

24 BY MR. HORAN:

25 Q. Dr. Hayne, as a result of your conclusions on the  
26 autopsies on Ms. Rigby, Mr. Stewart, and Mr. Golden, do you  
27 have an opinion as to whether or not they would be rendered  
28 immobile as a result of the wounds that they received?

29 A. They would have been rendered incapacitated

1 essentially instantly from the gunshot wounds.

2 Q. Dr. Hayne, I want to show you what has been  
3 introduced into evidence as State's Exhibit 77. It has been  
4 identified by Melissa Schoene with the Crime Lab as a diagram  
5 of what she found to be the crime scene when she arrived around  
6 1 o'clock on July the 16th of last year. Identified on that  
7 are the bodies of Mr. Golden--

8 BY MR. BILLY GILMORE: Your Honor, I'm going to  
9 object to Counsel testifying. He is leading.

10 BY MR. HORAN: I am trying--

11 BY THE COURT: --I think he is restating  
12 testimony, but not try not to lead.

13 BY MR. HORAN: Yes, sir.

14 BY MR. HORAN:

15 Q. Your findings regarding the injuries sustained by Ms.  
16 Tardy, Mr. Golden and Ms. Rigby, the injuries that they  
17 sustained, would it be consistent with the diagram or the  
18 findings of the bodies at the scene at the Tardy Furniture  
19 store?

20 BY MR. BILLY GILMORE: Your Honor, I object. I  
21 don't see where he could have an opinion because he  
22 hasn't seen the crime scene.

23 BY MR. HORAN: Introduced as a diagram, Your  
24 Honor. Whether it is consistent or not, he is going  
25 to be able to testify whether or not they were  
26 immobilized--

27 BY MR. BILLY GILMORE: --I don't think the proper  
28 predicate was laid to introduce it--

29 BY THE COURT: --I didn't understand your

1 question.

2 BY MR. HORAN: It's a question of whether or not  
3 his findings from the bodies of the victims, his  
4 autopsy findings are consistent with what Ms. Schoene  
5 found at the scene as to whether or not the bodies  
6 were in a situation where they were immobilized. I  
7 think he can testify to that. He has already  
8 testified that they were immobilized as a result of  
9 the wounds.

10 BY THE COURT: Overruled.

11 BY MR. BILLY GILMORE: Your Honor, I renew my  
12 objection. I don't see how he can go into the crime  
13 scene if he was not there.

14 BY MR. HORAN: It's already introduced, Your  
15 Honor. The diagram is introduced.

16 BY THE COURT: The diagram is in evidence. He  
17 can look-- after all, he has been accepted as an  
18 expert. He can look at that diagram and give an  
19 opinion if he has got one. Now I think you need to--  
20 I think you need to lay--

21 BY MR. HORAN: --I will clarify--

22 BY THE COURT: --that predicate on that  
23 question--

24 BY MR. HORAN: --it a little bit more.

25 BY MR. HORAN:

26 Q. Dr. Hayne, are the injuries that you--

27 (Pause while Mr. Evans confers with Mr. Horan.)

28 BY MR. HORAN:

29 Q. Dr. Hayne, did you have an occasion to go to the



1 crime scene?

2 A. Yes, sir.

3 Q. Did you observe the bodies there at the crime scene?

4 A. No, sir. I looked at the scene after the bodies had  
5 been removed, and the points of where the bodies were found  
6 were identified to me.

7 Q. And I assume you conferred with the Crime Lab at the  
8 scene?

9 A. I did, as well as members with the Mississippi  
10 Highway Patrol, the local law enforcement, as well as a  
11 representative of the Attorney General's Office.

12 Q. From what you saw at the scene, Dr. Hayne, and what  
13 you observed in the autopsies on all four of these individuals,  
14 is it consistent that these individuals would have received  
15 these wounds in close proximity in time to each other?

16 A. It would be consistent with close temple proximity,  
17 the receiving of the gunshot wounds, sir.

18 Q. Thank you. Dr. Hayne, I hand you what has been  
19 identified as State's Exhibits 90 and 91, and tell me whether  
20 or not you can identify those packages, please, sir?

21 A. I can, sir.

22 Q. Do those two exhibits have your markings on them?

23 A. They do, sir.

24 Q. And did you seal those exhibits?

25 A. I did, sir.

26 Q. Did you send those exhibits to the Mississippi Crime  
27 Laboratory?

28 A. I did, sir, under chain of custody.

29 Q. Do you have an opinion to a reasonable medical

1 certainty, Dr. Hayne, as to the cause and manner of death of  
2 Bertha Tardy?

3 A. I do, sir.

4 Q. What is that opinion?

5 A. Gunshot wound to the right temple, distant and  
6 perforating, sir.

7 BY MR. HORAN: Court will indulge me just for a  
8 second.

9 BY MR. HORAN:

10 Q. Dr. Hayne, if you would, pick up the casting skull,  
11 that cast skull that you have in front of you. Would you  
12 please identify on that particular skull where you observed the  
13 wounds to Ms. Tardy's--

14 A. --The entrance gunshot wound on the external surface  
15 was located approximately here. (Pointing on skull) The exit  
16 gunshot wound was located approximately here. Do you want me  
17 to show on the inside, sir?

18 Q. Please.

19 A. (Opens up skull model) The bullet entered the right  
20 temple producing an internally beveled entrance gunshot wound;  
21 that is, the inside of the wound was larger than the outside  
22 wound on the bone surface itself. The projectile subsequently  
23 traveled forward at approximately 40 to 50 degrees and slightly  
24 down traveling through the right and the left cerebral  
25 hemispheres producing a wound tract measuring approximately one  
26 inch in greatest dimension on cross section. It measured 2.6  
27 centimeters as it traveled through the brain itself. Some of  
28 the injury was also contributed to by the bone fragments that  
29 were dislodged from the right temple bone, and they were driven

1 into the brain. The bullet subsequently exited on the left  
2 inferior surface of the frontal lobe, approximately here. The  
3 bullet was traveling, as I indicated, markedly forward at  
4 approximately 40 to 50 degrees, slightly down at approximately  
5 5 to 10 degrees. And the bullet went through the left orbital  
6 plate, this bony structure that acts as the roof of the left  
7 eye; produced a large fracture approximately here; then  
8 exited through the lateral aspect of the left orbit of the left  
9 eye.

10 Q. In other words, what we classify as a through and  
11 through wound?

12 A. Through and through or perforating, yes, sir. In  
13 addition, there was a collection of blood within the cranial  
14 vault, 70 CC which would be the equivalent of approximately one  
15 third a cup of blood, and there was extensive bleeding over the  
16 surface of the brain.

17 Q. You testified previously that she would have been  
18 immobilized instantaneous. How long would she have lived after  
19 she received this particular injury?

20 A. I would not expect life to have persisted for a long  
21 period of time. There could be heart activity and respiration  
22 for a period of time, but I would not expect any neurological  
23 functioning.

24 Q. No appreciable functions within the body?

25 A. No, sir.

26 BY MR. HORAN: I will tender the witness, Your  
27 Honor.

28 CROSS-EXAMINATION BY MR. BILLY GILMORE:

29 Q. Dr. Hayne, when you received Ms. Tardy's body, did it

1 still have valuables on her body such as jewelry?

2 A. It did, sir.

3 Q. Rings? Were they all intact?

4 A. There was a left earring. There was not a right  
5 earring. There was a pair of eyeglasses, two rings, bracelet,  
6 and a watch, sir.

7 Q. All the valuables she appeared to be wearing that  
8 day, she had on her body when you received it?

9 A. I could not account for a right earring, sir.

10 Q. Other than that?

11 A. Yes, sir.

12 Q. Okay, sir. You have no idea who fired this fatal  
13 shot, do you?

14 A. I did not address my inquiry into that aspect of the  
15 case, sir.

16 BY MR. BILLY GILMORE: No further questions.

17 BY THE COURT: Let me see y'all up here just a  
18 second.

19 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
20 THE JURY AS FOLLOWS:)

21 BY THE COURT: I want to make sure everybody  
22 understands my, about the two items that were marked  
23 for identification. If they become relevant in the  
24 context that we talked about, in other words, if you  
25 open the door where I let them to where Steve Byrd  
26 can testify about them, I don't want there to be any  
27 question about them. I'm going to then let them come  
28 in as to where they came from. So my understanding  
29 is if we get to that point, y'all are agreeing that

1 his testimony would be that he took them from them?

2 BY MR. BILLY GILMORE: You mean he would come  
3 back and testify?

4 BY THE COURT: No, no, no. In other words, is  
5 he going to be-- if not, I'm going to allow you to  
6 proffer them.

7 BY MR. HORAN: I will make a proffer.

8 BY MR. BILLY GILMORE: Well, Your Honor, I  
9 thought they already -- he has already testified  
10 that's where he got the bullets from.

11 BY MR. HORAN: No, I didn't do that.

12 BY THE COURT: He didn't; he didn't. Mr. Horan  
13 followed the directions of the Court.

14 BY MR. HORAN: Your Honor, I would like to do it  
15 like this if it's all right. I would like to make a  
16 proffer in chambers, and then if it gets to that  
17 point, ask the Court in open Court in front of the  
18 jury to take judicial notice of the fact that Dr.  
19 Hayne has previously testified that they came from  
20 the body of those two individuals.

21 BY MR. BILLY GILMORE: Your Honor, we have no  
22 problem agreeing that they came from the two bodies.

23 BY THE COURT: Okay. Then that is all. I just  
24 didn't want us to get to that point to where I have  
25 got two bullets and then nobody to tell you where  
26 they come from. So that's the stipulation by the  
27 parties, that those two items were taken from them--

28 BY MR. HORAN: --as identified on the packages.

29 BY THE COURT: --as identified on the packages.

1 Okay?

2 BY MR. BILLY GILMORE: I presume they are marked  
3 as to which--

4 BY MR. HORAN: --there is handwriting on there,  
5 and they have also identified into evidence  
6 submission.

7 BY THE COURT: Byrd can identify them as to  
8 which one came from which.

9 BY MR. HORAN: I want to look at them real quick  
10 first, Judge.

11 BY THE COURT: Do that before you let Dr. Hayne  
12 go.

13 BY MR. HORAN: Okay.

14 (Pause while Mr. Horan looks at State's Exhibits  
15 S-90 and S-91.)

16 BY MR. HORAN: Okay. I am satisfied.

17 BY THE COURT: Okay.

18 END BENCH CONFERENCE.

19 BY MR. HORAN: Nothing further from the witness.

20 BY THE COURT: Is he finally excused?

21 BY MR. EVANS: Yes, Your Honor.

22 BY THE COURT: Dr. Hayne, you are free to go.

23 BY THE WITNESS: Thank you, Your Honor.

24 BY THE COURT: Yes, sir. Thank you.

25 WITNESS EXCUSED.

26 BY THE COURT: Who do you have next?

27 BY MR. EVANS: Charles Collins.

28 BY THE COURT: Was he sworn?

29 BY MR. HORAN: No, sir.

1                                   **CHARLES COLLINS,**  
2   a white male called to testify as a witness by the State of  
3   Mississippi, having first been duly sworn, testified as  
4   follows, to-wit:

5                   **BY THE COURT:** State your name for the record,  
6                   please, sir.

7                   **BY THE WITNESS:** Charles Collins.

8                   **BY THE COURT:** Okay, Mr. Collins, you are going  
9                   to have to talk up read loud so that they can hear  
10                  you. Pull that mike-- not that one, that one, over  
11                  in front of you too. That will help. Okay.

12                  **BY MR. EVANS:** May I proceed, Your Honor?

13                  **BY THE COURT:** Yes, sir.

14   **DIRECT EXAMINATION BY MR. EVANS:**

15                  Q. Mr. Collins, where do you live?

16                  A. At 502 Bell Street, Winona.

17                  Q. And how long have you lived in Winona, Mississippi?

18                  A. 54 years.

19                  Q. Mr. Collins, I want to direct your attention back to  
20                  July the 16th of last year and ask you if you remember that  
21                  day?

22                  A. Yes, sir. I do.

23                  Q. Did you have an occasion to be in town that morning?

24                  A. Yes, I did.

25                  Q. Did you have an occasion to see Carmen Rigby at any  
26                  time that morning?

27                  A. Yes, I did.

28                  Q. Would you tell the jury where you saw her and  
29                  approximately what time that morning?

1           A.    I saw her at the post office at Winona.  It was going  
2 to be maybe a minute or two before 9 o'clock or at 9 o'clock.  
3           Q.    All right, and about how many blocks from Tardy  
4 Furniture is the post office, just a rough estimate?  
5           A.    About two blocks.  
6           Q.    Okay, and did you see her anywhere else that morning?  
7           A.    I saw her going in the front door of Tardy Furniture  
8 Company.  
9           Q.    And approximately what time was that?  
10          A.    About 9:15, a little bit after 9:15.  
11          Q.    All right.  Did you have an occasion after you saw  
12 Carmen Rigby going back in Tardy Furniture to see anyone  
13 standing in front of Tardy Furniture?  
14          A.    I seen two people standing across the street in  
15 front--  
16          Q.    --Can you describe what those two people were doing?  
17          A.    Well, I never would have noticed them, but they  
18 looked like-- I just got a brief glimpse, just like this, as I  
19 passed.  One man had both hands on the hood of the car, and one  
20 man was standing at the door of a car.  And the one on the hood  
21 of the car was making gestures with his hands like that, looked  
22 like they may have been arguing.  
23          Q.    Which direction--  
24          A.    --just as I passed.  
25          Q.    In which direction were you traveling?  
26          A.    I was traveling south on Front Street.  
27          Q.    All right.  And did you pay attention to the two  
28 people after they got your attention?  
29          A.    Well, I just like got a glimpse, just like this, and



1 then I had to turn around because I was going down the street.

2 Q. All right, were you later asked to look at any  
3 photographs to see if you could positively identify either one  
4 of those two individuals?

5 A. Yes, sir; I was.

6 Q. Were you able to positively identify one of the two  
7 individuals that you saw there?

8 A. I picked out a photograph that I believe was one of  
9 them, yes.

10 Q. Mr. Collins, I want you to look around in the  
11 courtroom today and see if you see one of those two individuals  
12 that you saw standing in front of Tardy Furniture?

13 A. The man I seen didn't have glasses on that day.

14 Q. All right. Other than the glasses, do you see the  
15 person in the courtroom today?

16 A. I see a man I think is him.

17 Q. Would you point to him and identify him, please?

18 A. That man right there.

19 BY MR. EVANS: May the record reflect that he is  
20 pointing to the Defendant in this case, and Your  
21 Honor, I would ask that the Court allow the Defendant  
22 in this case to remove his glasses so that Mr.  
23 Collins can look at him.

24 (NOTE: The Defendant removed his glasses.)

25 BY MR. BILLY GILMORE: Your Honor, I'm going to  
26 object to the statement the District Attorney says.  
27 He hasn't positively identified him. He says I  
28 think that looks like him or something to that  
29 effect.

1                   BY THE COURT: Well, but he didn't ask me to  
2                   find that. He asked me to let the record reflect  
3                   that he pointed at the Defendant, and the record can  
4                   so reflect. I would ask the Defendant to remove his  
5                   glasses at this time.

6                   (NOTE: The Defendant had already removed his  
7                   glasses.)

8                   BY THE COURT: He has got them off now? Okay.  
9                   All right.

10                  BY THE WITNESS:

11                  A. That looks a lot like him.

12                  Q. What was the person doing that you are saying looked  
13                  like this man sitting at the table?

14                  A. He was standing beside the car.

15                  Q. And which direction was he traveling the last time  
16                  you saw him?

17                  A. I made the block around by Hunger's Dry Cleaners, and  
18                  I come back up. And when I come back up, they had started  
19                  across the street sort of like in front of Coast to Coast  
20                  there, which is up from Tardy Furniture Company. That's the  
21                  last time I saw them.

22                  Q. And what time of day was that?

23                  A. When I first went to Tardy's, I went back home. I  
24                  had to go to Don Mitchell's shop. It is going to be around 10  
25                  minutes to 10:00, 5 minutes to 10:00 or somewhere in that  
26                  neighborhood.

27                  Q. Do you remember what the car looked like that you saw  
28                  out there?

29                  A. It was a brown car, but it was real dirty. It had

1 dust all over it, and when I made the block and come back  
2 behind the car, the car, all the tail lights went all the way  
3 across the car.

4 Q. Did you notice what Ms. Rigby was wearing that  
5 morning?

6 A. Yes, I did.

7 Q. What was she wearing?

8 A. She was wearing a pink looking top and bottom, like a  
9 sweat suit or something. It was a knit suit. The top was the  
10 same color as the bottom.

11 Q. All right, sir. The other individual, you never  
12 positively identified; is that correct?

13 A. No, I did not.

14 Q. Do you know Robert Golden?

15 A. Yes, I did.

16 Q. Do you know whether that other individual was Robert  
17 Golden or not?

18 A. Oh, you mean did I see him outside the store that  
19 day? No, I mean I knew him. No, I didn't see him outside the  
20 store, no. But I knew him, yeah.

21 Q. All right. How were the two people acting? What was  
22 it that caught your eye?

23 A. The hand expressions they were doing like they were  
24 arguing. That's the only reason that I even glanced over and  
25 noticed them.

26 BY MR. EVANS: May I have the Court's indulgence  
27 for just a moment.

28 (State's Counsel confer briefly.)

29 BY MR. EVANS: Tender the witness, Your Honor.

1 CROSS-EXAMINATION BY MR. BILLY GILMORE:

2 Q. Mr. Collins, what time did you leave your house the  
3 first time that morning?

4 A. Around 7:30.

5 Q. And where did you go?

6 A. Don Mitchell's repair shop on Highway 51 South.

7 Q. Were you having some repairs done to your automobile?

8 A. I brought my wife's car down there to have a set of  
9 spark plugs and spark plugs wires put on it.

10 Q. Did you walk back home?

11 A. No. My mother or my sister one came and picked me  
12 up. I don't remember which one, but one of them came and  
13 picked me up.

14 Q. You have a problem with your memory, don't you, Mr.  
15 Collins?

16 A. I take a lot of medicine, sir, and I have trouble  
17 remembering a lot of things; yes, sir.

18 Q. As a matter of fact, the morning that you went  
19 uptown, you went up there really for two purposes, did you not?

20 A. Three purposes.

21 Q. What three purposes was that?

22 A. I was going to the Merchant and Farmers-- Peoples  
23 Bank, to the Post Office-- well, four things; post Office, pay  
24 my gas bill, and go to Hunger's Dry Cleaners.

25 Q. Okay. As a matter of fact, you went up there two or  
26 three times and forgot to do any of that; is that correct?

27 A. No, sir. When I passed the Merchants and Farmers  
28 Bank, it was at 8:58, and they don't open the doors until 9  
29 o'clock, and I couldn't go in. So I decided to go down to the

1 post office and get one of them done before I went back.

2 Q. All right, sir. How many times did you go uptown  
3 that morning to pick up cleaners down at the dry cleaners?

4 A. Twice.

5 Q. And forgot both times, didn't you?

6 A. No, sir.

7 Q. Did you get them the second time?

8 A. No, sir.

9 Q. You just didn't pick them up?

10 A. The first time I went to town when I went down by the  
11 dry cleaners, there were several cars parked there. So it  
12 wasn't any room for me to park, so I circled back around and  
13 went and paid my gas bill.

14 Q. All right, sir. Did you not go back home without  
15 getting your clothes that time?

16 A. I sure did.

17 Q. Okay, sir.

18 A. And the reason I did is because I forgot to get the  
19 money to get the clothes out of the cleaners, and I had to go  
20 back and get the money.

21 Q. All right, sir. Now Mr. Collins, now you have  
22 previously made a statement to law enforcement officers, have  
23 you not?

24 A. I have done what?

25 Q. Have you previously made a statement to police  
26 officers, law enforcement officers?

27 A. Have I previously made one?

28 Q. Yes, sir.

29 A. I made one that morning; yes, sir.

1 Q. All right, sir. Did they tape it?

2 A. I have no idea if they taped it or not.

3 Q. All right, sir. Did they interview you more than one  
4 time?

5 A. That morning?

6 Q. Any time.

7 A. The police officers?

8 Q. Yes, sir.

9 A. No, sir.

10 Q. All right, did anybody interview you more than one  
11 time?

12 A. The District Attorney's Office did.

13 Q. Okay, and when was that?

14 A. I have no idea as to what the date was.

15 Q. All right, sir.

16 A. And Sheriff Thompkins called me one time.

17 Q. All right, sir. Did you make a statement to an  
18 investigator with the District Attorney's office named John  
19 Johnson?

20 A. Yes, I did.

21 Q. And did he tape that statement?

22 A. I believe he did.

23 Q. All right, sir.

24 A. I'm not sure, but I believe he did.

25 Q. Now isn't it true, Mr. Collins, in that statement you  
26 said, I just for one split second got a glimpse, talking about  
27 the two men?

28 A. I did.

29 Q. Okay, sir.

1           A.    I just told that just then.

2           Q.    Okay. And I believe you also said, "I never seen his  
3 face. All I seen was more or less from the back of him every  
4 time I seen him"?

5           A.    No, I did not.

6           Q.    You didn't make that statement?

7           A.    I did not. I told him the man standing at the hood  
8 of the car with both hands on the hood of the car, all I seen  
9 was from the back of him. I said everything I ever seen was  
10 the back of him.

11          Q.    Never did see his face?

12          A.    No, sir. I did not.

13          Q.    Which one did you see the face?

14          A.    The one standing at the door of the car.

15          Q.    Okay. Now where I can get it clear in my mind, you  
16 were going south the first time you saw him on Front Street?

17          A.    I was going south the only time I saw him.

18          Q.    All right. Now where was this brown car parked?

19          A.    On the other side. They've got a row of trees  
20 planted down through there. You park this way going this way  
21 and that way going that way. They were on the other side  
22 facing the side with the railroad track.

23          Q.    All right, sir. And in other words, if you go down  
24 Front Street, on the west side of that street you have a line  
25 of stores?

26          A.    Right.

27          Q.    And on the east side is the railroad track?

28          A.    That's right.

29          Q.    And if you are going south on Front Street, you are

1 over next to the store front; is that correct?

2 A. That's right.

3 Q. And if you are going north, you are closer over to  
4 the railroad track?

5 A. That's right.

6 Q. All right, in the center of that street there is  
7 trees planted and some other things set out there?

8 A. It wasn't at that time; it was only trees there.

9 Q. All right, sir. Now are you saying he was parked  
10 where the trees were, or was he parked over nearer to the  
11 railroad?

12 A. He was parked where the trees were.

13 Q. All right, sir. And which way was the car facing?

14 A. Angled in facing to the north.

15 Q. So he would have probably come up north to angle in;  
16 is that correct?

17 A. He would have had to come -- that's right.

18 Q. All right, sir. Now you said it was two black men?

19 A. That's right.

20 Q. And one of them was standing in front of the car with  
21 his hands on the hood?

22 A. That's right, in the middle of the hood.

23 Q. All right, sir. And one was standing up with the  
24 door open. Was he inside the--

25 A. He was inside--

26 Q. --door standing on the ground--

27 A. He was standing -- he had a door open. He was  
28 standing inside. He had one hand on top of the door and one  
29 hand on top of the car.



1 Q. All right, sir. And do you remember what they were  
2 wearing?

3 A. No, I do not.

4 Q. What kind of clothing?

5 A. I do not. I just got a brief glimpse of them as I  
6 passed. As I looked and I passed, I got a brief glimpse of  
7 them.

8 Q. And did they have on hats or caps?

9 A. I don't think so.

10 Q. You don't think they did have on caps or hats?

11 A. (Witness shakes his head in the negative.)

12 Q. Okay. Now you were shown some type of a picture  
13 line-up; is that what you said?

14 A. That's correct.

15 Q. Now isn't it true, Mr. Collins, you told them today  
16 basically what you said today; it looks like him?

17 A. I first-- the very words I told them when I first  
18 looked at them, they showed me two different sets. None of  
19 them in the first set looked like him at all. In the second  
20 set, I told them; this is the very words I said, "I think  
21 that's him. I believe that's him." And that's the words I  
22 said.

23 Q. All right, sir. But I wrote down, I believe, what  
24 you said today, "looks a lot like him." Wasn't that what you  
25 just testified to, Mr. Collins?

26 A. That's exactly right.

27 Q. So you can't positively say this man seated at this  
28 table is the man you saw standing at that car?

29 A. That man right there weighs a little bit more now

1 than he did before. You know, like I say, it's-- that man  
2 looks like him.

3 Q. Looks like him?

4 A. That's right.

5 Q. But you can't sit there under oath and swear this is  
6 the man you saw up there on Front Street that morning?

7 A. All I can tell you is he looks like him.

8 Q. Looks like him; all right, sir.

9 A. I just got a brief glimpse of him, just like I said.

10 Q. Now you said something in your statement that you  
11 were kind of nosy, and you circled and went back to see what  
12 was going on?

13 A. Yeah, I'm like most people. I thought if they was  
14 into something, and I made a circle to see what was going on.

15 Q. And what were they doing then?

16 A. They were going across the street. They had made  
17 their turn, just like I said, and was going across the street.

18 Q. All right. And were they parked closer to Coast to  
19 Coast or closer to Tardy's Furniture?

20 A. Well, there was vehicles parked down through there,  
21 and they was parked closer to Coast to Coast than they were to  
22 Tardy Furniture Company, yes.

23 Q. All right. Now are you familiar with an alley being  
24 in between--

25 A. --yes, I am--

26 Q. --Coast to Coast and down toward the block that  
27 Tardy's Furniture is on?

28 A. Yes, sir; I am.

29 Q. All right, were they north of that alley?

1           A.   No, sir. They was, it was almost even with that  
2 alley.

3           Q.   Even with the alley. All right, sir. Now I believe  
4 on the block that Tardy's Furniture, there is a couple of empty  
5 stores before you get down to the Tardy's Furniture store; is  
6 that correct?

7           A.   I know there is one. I don't know; it's an empty  
8 store there or something, yeah.

9           Q.   But now which way were they going the last time you  
10 saw them?

11          A.   There was a truck sitting on the other side from  
12 where they were parked. They was going in front of their car  
13 and between that truck, so I went ahead and made my loop. I  
14 seen wasn't nothing going on, and I went right back down Summit  
15 Street and went back home.

16          Q.   All right, sir. So you could just make a U-turn at  
17 the end of the street?

18          A.   That's right.

19          Q.   As a matter of fact, when you get down to the  
20 cleaners, that is kind of a halfway dead end street? You have  
21 to--

22          A.   --right.

23          Q.   --veer off to the left?

24          A.   That's exactly right.

25          Q.   All right, so a lot of people just make a U-turn and  
26 go back?

27          A.   That's right.

28          Q.   All right, sir. Now what time did you observe these  
29 men up on Front Street?

1           A.    I just told y'all; I think it was about 10 minutes  
2 until 10:00.

3           Q.    All right, sir.

4           A.    It could have been 5 minutes until 10:00, but in that  
5 neighborhood.

6           Q.    All right, that's what I wrote down. You said 10  
7 minutes until 10:00 or 5 minutes until 10:00.

8           A.    That's right.

9           Q.    Okay. Are you aware that Sam Jones had already found  
10 the bodies at that time?

11          A.    No, I was not.

12          Q.    Did you go into any place other than the post office  
13 that morning uptown?

14          A.    I sure did.

15          Q.    Where else did you go?

16          A.    I went and paid my gas bill just like I told you.

17          Q.    What time was that?

18          A.    Just as quick as I went down there and made a loop  
19 around-- when I saw Carmen Rigby go in the Tardy Furniture  
20 Company, she turned around and waved at me. I made a loop  
21 right around just like I just told you and went right back up  
22 and went down there, which I think it is Quitman Street; I'm  
23 not sure, but went down and paid my gas bill.

24          Q.    All right, sir.

25          A.    That's where I was headed.

26          Q.    When did you first become aware there had been some  
27 commotion up at Tardy's Furniture store?

28          A.    When I got back home.

29          Q.    And what time was that?

1 A. Around 10:25, 10:30.

2 Q. And how did you find out?

3 A. I had a scanner, and I heard it on the scanner.

4 Q. All right, sir. You said you looked at two picture  
5 lineups?

6 A. I did.

7 Q. Did you see someone in the other lineup? You said  
8 there is a possible?

9 A. No, I did not.

10 Q. Okay, did you make a statement that this one looks  
11 similar to one of them?

12 A. I picked out a picture and told them that the  
13 complexion -- the pictures I seen weren't very good pictures,  
14 and I told them, I said, "The complexion is going to look like  
15 this one right here." I told them that morning at Tardy  
16 Furniture Company what the people looked like.

17 Q. Okay. But you cannot positively identify who those  
18 two people were?

19 A. Those two people that I showed about the complexion,  
20 no, I cannot.

21 BY MR. BILLY GILMORE: Court indulge me.

22 (Defense Counsel confer briefly.)

23 BY MR. BILLY GILMORE: Tender the witness, Your  
24 Honor.

25 REDIRECT EXAMINATION BY MR. EVANS:

26 Q. Mr. Collins, opposing Counsel has asked you about two  
27 different photo lineups. The second photo lineup you were  
28 shown, you did identify someone; is that correct?

29 A. That's correct.

1 Q. And we are talking about a year's difference in time  
2 between the time you identified the person in that lineup and  
3 now; is that right, or over a year?

4 BY MR. BILLY GILMORE: Your Honor, I'm going to  
5 object to this line of questioning. He said then he  
6 did not make a positive identification.

7 BY MR. EVANS: Wait until the Court rules before  
8 you answer.

9 BY THE COURT: What was that question again?  
10 I'm sorry.

11 BY MR. EVANS: I have no idea.

12 BY THE COURT: No, your question.

13 BY MR. EVANS: I have no idea.

14 BY THE COURT: Well, I don't either. That makes  
15 two of us. Ms. Burchfield, could you tell me what it  
16 was?

17 BY THE COURT REPORTER: "And we are talking about  
18 a year's difference in time between the time you  
19 identified the person in that lineup and now; is that  
20 right, or over a year?"

21 BY THE COURT: The objection is premature.

22 BY MR. EVANS:

23 Q. You may answer the question.

24 A. That's correct.

25 Q. And you have said that the person appears to have  
26 changed by gaining weight since that time?

27 A. That's correct.

28 Q. I want to show you State's Exhibit 10 and ask you if  
29 this is the photo lineup that you were shown?

1           A.    I believe the pictures I seen was black and white.

2           Q.    All right, so you don't know if that's the same one  
3 or not?

4           A.    This is not the same one. The pictures I seen were  
5 black and white.

6                   BY MR. EVANS: (To Mr. Horan) All right, do you  
7 know where that other one is? That is all right.

8 BY MR. EVANS:

9           Q.    Mr. Collins, other than the Defendant at the table  
10 looking a little heavier and now having glasses on, is there  
11 anything else that looks different about him?

12          A.    He didn't look quite that dark to me.

13          Q.    Okay, of course, you were outside in the sun?

14          A.    Yeah, but he didn't look quite that dark to me.

15          Q.    All right, and that is all?

16          A.    That is all.

17                   BY MR. EVANS: No further questions.

18                   BY THE COURT: Is he finally excused?

19                   BY MR. EVANS: Yes, Your Honor.

20                   BY THE COURT: Mr. Collins, you are free to go,  
21 or you can stay in the courtroom.

22                   BY THE WITNESS: I can go home?

23                   BY THE COURT: Yes, sir.

24                   BY THE WITNESS: Okay, thank you.

25                               WITNESS EXCUSED.

26                   BY THE COURT: Who will you have next?

27                   BY MR. EVANS: Frederick Veal.

28                   BY THE COURT: What was his last name?

29                   BY MR. EVANS: Veal, V-E-A-L.

1 (Mr. Evans approached the Court for the  
2 following:)

3 BY MR. EVANS: Your Honor, I think we have got  
4 one matter we are going to need to tend to before he  
5 testifies also if I may.

6 BY THE COURT: In chambers?

7 BY MR. EVANS: Well, chambers or the bench  
8 either one.

9 BY THE COURT: Okay, we will do it at the bench.

10 (CONFERENCE WITH ALL COUNSEL AT THE BENCH OUT OF  
11 THE HEARING OF THE JURY AS FOLLOWS:)

12 BY MR. EVANS: (Inaudible).

13 BY THE COURT REPORTER: --I can't hear you.

14 BY MR. EVANS: Your Honor, this next witness was  
15 in jail with the Defendant, and the Defendant made  
16 statements to him. We intend to go into that at this  
17 point. We would move in limine that opposing Counsel  
18 not be able to ask about any prior convictions. You  
19 know, we have no problem with him asking if anyone  
20 offered him anything for his testimony, but we do  
21 object to any prior convictions being brought up at  
22 this point.

23 BY MR. BILLY GILMORE: Don't we have a right to  
24 impeach a witness?

25 BY THE COURT: Well, I tell you what we are  
26 going to do. Let me reserve my ruling until I can  
27 read the rule, and we will do that before he  
28 cross-examines.

29 BY MR. EVANS: Yes, sir.



1 BY THE COURT: We will take, give the jury a  
2 break at that time.

3 END BENCH CONFERENCE.

4 BY THE COURT: Has this one been sworn?

5 BY MR. EVANS: Yes, sir; I think he was this  
6 morning.

7 BY THE COURT: Well, we will ask him.

8 FREDERICK VEAL,

9 a black male called to testify as a witness by the State of  
10 Mississippi, and having first been duly sworn by the Clerk at  
11 this time, testified as follows, to-wit:

12 BY MR. EVANS: May I proceed, Your Honor?

13 BY THE COURT: Uh-hum.

14 DIRECT EXAMINATION BY MR. EVANS:

15 Q. If you would, state your full name, please?

16 A. Frederick Veal.

17 Q. Mr. Veal, I want to ask you if you know a person by  
18 the name of Curtis Flowers?

19 A. Yes, sir.

20 Q. Did you have an occasion to be in jail with him over  
21 in Leflore County?

22 A. Yes, sir.

23 Q. Did he make any comments to you about having killed  
24 the people at Tardy Furniture?

25 A. Yes, sir.

26 Q. What did he tell you?

27 A. We were playing dominoes late one night. Everybody  
28 was sleeping. He told me -- I told him I had a similar case,  
29 and I told him I probably can help him beat his case. And he

1 said yeah, he did it and told me he did it.

2 Q. Specifically, what did he tell you about what he did?

3 A. Well, he said he went in the store. He was mad about  
4 something, and he killed the lady first, and he killed the  
5 little boy last, and he got twenty something hundred dollars  
6 out of the store. He told me he bought some, bought some dope  
7 and bought a hundred dollars worth of crack. He went to Texas  
8 and started working at Piggly Wiggly.

9 Q. All right, did he tell you when he went to Texas?

10 A. What specific day?

11 Q. Well, month or whatever?

12 A. No, sir.

13 Q. Is that basically what he told you?

14 A. Mostly.

15 Q. And y'all were in jail together at that time?

16 A. Yes, sir, about 4:00 in the morning. We were playing  
17 dominoes.

18 Q. Was anyone else awake at that time besides the two of  
19 you?

20 A. No, sir.

21 BY MR. EVANS: Your Honor, I tender the witness.

22 BY THE COURT: Okay. There is a matter I have  
23 to determine in chambers, ladies and gentlemen, at  
24 this point in time. I'm going to, I will give you a  
25 short break while I do that. All right.

26 (WHEREUPON THE COURT, ALL COUNSEL, THE DEFENDANT  
27 AND THE COURT REPORTER WENT TO CHAMBERS OUT OF THE  
28 PRESENCE OF THE JURY FOR THE FOLLOWING:)

29 BY THE COURT: Okay. My understanding is that

1           this is, that there is-- well, not my understanding.  
2           The State has moved for a motion in limine to  
3           disallow the impeachment of this witness by evidence  
4           of a conviction of a prior crime, and Rule 609  
5           applies, also Peterson v. State. Do you intend to  
6           attempt to do that?

7           BY MR. JOHN GILMORE: Yes, sir.

8           BY MR. BILLY GILMORE: Yes, sir.

9           BY THE COURT: Then you need to make a showing  
10          of how it would be relevant. Well, I have to make a  
11          ruling that the probative value of admitting it  
12          outweighs the prejudicial effect. So you will have  
13          to tell me how.

14          BY MR. JOHN GILMORE: Well, Your Honor, he has  
15          been convicted of three counts of uttering, I am  
16          assuming that is uttering forgery, and that is 609  
17          (a)(2) involving dishonesty or false statement,  
18          regardless of the punishment. And his testimony goes  
19          directly to evidence of something that my client may  
20          or may not have said.

21          BY THE COURT: How many counts -- what has he  
22          been convicted of? Three counts of uttering forgery?

23          BY MR. JOHN GILMORE: Three counts of uttering  
24          forgery and possession of marijuana.

25          BY MR. BILLY GILMORE: And he was in jail on  
26          another count, and I don't know the outcome of that  
27          yet.

28          BY THE COURT: Well, in jail doesn't count. It  
29          has got to be a conviction. Three counts of uttering

1                   forgery and what else?

2 BY MR. JOHN GILMORE: Possession of marijuana.

3 BY THE COURT: Possession of marijuana would be  
4 a misdemeanor depending on what it was.

5 BY MR. BILLY GILMORE: Your Honor, this is  
6 evidently--

7 BY MR. EVANS: --It must have been a felony.  
8 All I knew was that that was his convictions, so I  
9 furnished them. Whether it is a felony or  
10 misdemeanor, I don't have any--

11 BY THE COURT: --Okay, what do you state about  
12 the uttering forgery?

13 BY MR. HORAN: Your Honor, they are going to  
14 have to prove it is under the time limitation under  
15 the rule.

16 BY THE COURT: Okay.

17 BY MR. JOHN GILMORE: Well, that was not given  
18 to us in discovery, and we don't have--

19 BY MR. HORAN: --I don't think we are required  
20 to do that, Your Honor. We just have to give them--

21 BY MR. BILLY GILMORE: --I think we requested it  
22 in discovery.

23 BY MR. HORAN: You didn't get a specific order  
24 for it. The witness has been available.

25 BY THE COURT: If there is no specific order of  
26 discovery, discovery is controlled totally by the  
27 Rules. And they are only required to produce to you  
28 what is within the Rules.

29 BY MR. JOHN GILMORE: Your Honor, we have

1 requested a specific order on several occasions, and  
2 the Court did not do it.

3 BY THE COURT: I don't ever remember you asking  
4 me for an order. I would have given you one.

5 BY MR. JOHN GILMORE: I did a motion and I did a  
6 renewed motion. You can check the file on that, Your  
7 Honor.

8 BY THE COURT: I am sure you did a motion. Did  
9 you call it up?

10 BY MR. BILLY GILMORE: I think we--

11 BY THE COURT: --I don't believe there is  
12 anything in the record where I refused to give you an  
13 order on discovery.

14 BY MR. BILLY GILMORE: I don't think you  
15 refused. You just, you never ruled on it.

16 BY THE COURT: Well, the motion is no good until  
17 you call it up.

18 BY MR. BILLY GILMORE: I think it was called up,  
19 but you didn't rule.

20 BY THE COURT: The Court doesn't recall that.

21 BY MR. HORAN: On criminal history, on specific  
22 criminal history?

23 BY THE COURT: Well, I don't recall not making a  
24 ruling on that motion anyhow. Why would I not make--  
25 why would I reserve my ruling on a motion for  
26 discovery? I don't recall doing that. I guess I  
27 could have, but I don't-- I can't think of a  
28 situation why I would do that.

29 BY MR. EVANS: Your Honor, I don't think they

1 are entitled to go into either one of them, but I do  
2 not want this case reversed over something that  
3 insignificant. He has already admitted he has been  
4 in jail. If the Court feels that there is any  
5 question, we will agree to allow them to go into the  
6 uttering forgeries, just out of precaution.

7 BY THE COURT: Well, on the uttering forgeries,  
8 that would look like to me, under 609 (a)(2), I don't  
9 even have to make a balancing test on that. I think  
10 they can go into that. The time limit is, of course,  
11 questionable, but I would say this. Before I rule  
12 that out, I would-- let's, I would want somebody to  
13 make a determination--

14 BY MR. HORAN: --Your Honor, here is the  
15 problem--

16 BY THE COURT: --In other words, I am like you.  
17 Let's, I would rather let it in than I had to have  
18 this, to have a problem about this. Now the  
19 possession of marijuana, I don't--

20 BY MR. EVANS: I see no probative value to that.

21 BY THE COURT: It does not fall within the rule  
22 or within Peterson in my opinion. Since you are  
23 going to allow the uttering, you are going to get the  
24 uttering forgery in, it has very little impeachment  
25 value, if any; the possession does.

26 BY MR. BILLY GILMORE: Well, Your Honor--

27 BY THE COURT: --Wait; let me finish. And I  
28 don't know about the point in time. The Defense has  
29 offered nothing on that. It has-- well, Peterson, of

1 course, talks to defendants rather than witnesses, so  
2 the question of similarity between the past crime and  
3 the charged crime, I don't know that it's relevant,  
4 but it is certainly, possession of marijuana and  
5 murder are two different, distinct things. If that  
6 had to be, if that was an element, I would rule that  
7 it did not apply. I do, I think his testimony is  
8 important, and it's essential to the credibility  
9 issue, but I think the other, I think the prejudicial  
10 value outweighs-- the prejudicial effect outweighs  
11 the probative value in relation to the marijuana  
12 charge. I will allow the uttering forgery.

13 BY MR. HORAN: Your Honor, I would like to move  
14 in limine that they be precluded from going into any  
15 extrinsic evidence of the conviction, i.e., this is  
16 for stealing or what. I mean, you know, all they can  
17 do is ask him has he been convicted of uttering  
18 forgery. The answer is yes or no, and if he says no,  
19 they have got to be prepared to go forward.

20 BY THE COURT: That's right.

21 BY MR. BILLY GILMORE: Well, Your Honor, my  
22 understanding of the proper way to open the door on  
23 the impeachment is to ask the question, "Have you  
24 ever been convicted of a crime?" and if he says--

25 BY MR. EVANS: --We are going to have to be able  
26 to tell him only to tell about the uttering  
27 forgeries.

28 BY THE COURT: Right. He has got to be  
29 apprised of what the ruling of the Court is. It

1 wouldn't be any point of me making a ruling if you  
2 could do that.

3 BY MR. BILLY GILMORE: Well, I mean I can go to  
4 the next question of "What have you been convicted  
5 of?"

6 BY THE COURT: Well, he won't have to if he  
7 answered all of it. If he will answer it yes or no,  
8 I guess you could do that.

9 BY MR. HORAN: Well, if he says, "What have you  
10 been convicted of?" and we-- our motion in limine  
11 regarding the possession of marijuana has no effect.  
12 He can ask him specifically, "Have you been convicted  
13 of uttering forgery?" which is admissible. We are  
14 agreeing that that is admissible.

15 BY THE COURT: Well, if he asks him, "Have you  
16 ever been convicted of a crime?" And he says yes,  
17 and stops at that, then the next question is--

18 BY MR. EVANS: Of course, we will have to be  
19 able to tell him not to go--

20 BY MR. BILLY GILMORE: --the next question is  
21 what crime.

22 BY MR. HORAN: Not what crime, Judge. That is  
23 not an admissible crime, possession of--

24 BY THE COURT: --Well, let me put it this way.  
25 If Mr. Gilmore asks that question to elicit something  
26 about possession of marijuana, he will have violated  
27 the Court's order, and he is going to be in trouble  
28 with me. Now that is the simple way to answer that.  
29 You are going to have to word your question where you



1 don't get an answer that violates what I just did.

2 BY MR. BILLY GILMORE: As long as he don't  
3 object, I will ask him directly, "Have you been  
4 convicted of three counts of uttering forgery?"

5 BY THE COURT: I will leave it in your hands.  
6 Y'all know what my ruling is, and I'm going to be  
7 upset now if you ask that question in a manner that  
8 can get answered wrong.

9 BY MR. HORAN: We need to explain to the  
10 witness.

11 BY THE COURT: I think it would be best if you  
12 explained it to the witness. Then nobody would have  
13 a problem about getting in that problem.

14 BY MR. BILLY GILMORE: Well, Your Honor, we are  
15 going to object to coaching of a witness.

16 BY THE COURT: Okay, all right. Then the ball  
17 is in your park.

18 BY MR. HORAN: I don't know any other way to do  
19 it other than tell him what they can be--

20 BY MR. EVANS: --I don't think it is coaching  
21 the witness to tell him what the Court has ruled that  
22 they can answer to, but we will follow whichever--

23 BY MR. BILLY GILMORE: --I will ask him the  
24 direct question. Then if he volunteers more than  
25 that, I am sorry.

26 BY THE COURT: Do what?

27 BY MR. BILLY GILMORE: I said I will ask him the  
28 direct question about the uttering. If he volunteers  
29 something else, I am sorry.

1 BY THE COURT: Well, if you ask him that direct  
2 question and he is not responsive, then that is not  
3 your fault. It wouldn't be anybody's fault.

4 BY MR. EVANS: Well, of course--

5 BY THE COURT: --and look--

6 BY MR. EVANS: --At this point, Your Honor, I  
7 have told him that the Court may rule that his prior  
8 convictions are admissible. The Court may rule that  
9 they are not admissible, but that we would let him  
10 know whether or not he was to answer those questions.

11 BY THE COURT: Well, why can't the Court advise  
12 him that he can't answer that?

13 BY MR. EVANS: That would be fine.

14 BY THE COURT: Okay. How about that?

15 (WHEREUPON, THE COURT, COUNSEL, AND THE  
16 DEFENDANT RETURNED TO OPEN COURT, BUT BEFORE THE JURY  
17 WAS BROUGHT BACK IN AND WITH MR. FREDERICK VEAL ON  
18 THE WITNESS STAND, THERE WAS THE FOLLOWING:)

19 BY THE COURT: Mr. Beal, is that your name?  
20 Beal?

21 BY THE WITNESS: Veal.

22 BY THE COURT: Veal, okay. Mr. Veal, they are  
23 going to ask you a question or two about your prior  
24 convictions. I have ruled that you do not have to  
25 answer about--

26 BY THE WITNESS: --I will answer.

27 BY THE COURT: I understand; I know you will,  
28 but I have ruled that you do not have to answer about  
29 the possession of marijuana.

1 BY THE WITNESS: Okay.

2 BY THE COURT: You just don't-- when he asks you  
3 that question, he will be talking about the uttering  
4 forgery.

5 BY THE WITNESS: Okay.

6 BY THE COURT: Okay.

7 BY THE BAILIFF: Are you ready for them, Your  
8 Honor?

9 BY THE COURT: Yes.

10 (Jury enters the courtroom at 4:05 P.M.)

11 BY MR. BILLY GILMORE: May I proceed, Your  
12 Honor?

13 BY THE COURT: You may.

14 CROSS-EXAMINATION BY MR. BILLY GILMORE:

15 Q. Your name is Frederick Veal?

16 A. Yes, sir.

17 Q. And where do you live, Mr. Veal?

18 A. 18A Thurman Drive, Greenville, Mississippi.

19 Q. Now you are saying that Mr. Flowers made some type of  
20 statement to you?

21 A. Yes. And then he boast about it, about how they  
22 didn't have no evidence on him. He be glad when October so he  
23 can get out.

24 Q. And isn't it true that y'all were talking about what  
25 he was charged with?

26 A. What he was charged with?

27 Q. Y'all were talking about what he was charged with?

28 A. We were talking about he was charged with four  
29 capital murders, and he got into the details with me.

1                   BY THE COURT: Mr. Veal, if you will, don't put  
2                   your hand in front of your mouth because these people  
3                   might not be able to hear you; okay?

4                   BY THE WITNESS: Oh, yes, sir; okay. I'm  
5                   sorry.

6 BY MR. BILLY GILMORE:

7                   Q. Mr. Veal?

8                   A. Yes, sir.

9                   Q. Were you convicted of uttering forgery?

10                  A. Yes, sir.

11                  Q. Okay, and where did this conversation take place  
12                  between you and Mr. Flowers?

13                  A. In Leflore County Jail.

14                  Q. And do you remember about when this was?

15                  A. Let me see; I was locked up in -- I can't remember  
16                  the specific day when I was locked up.

17                  Q. Do you remember about when it was?

18                  A. About, let me see, (whispering) July, August,  
19                  September. June or July. I stayed in jail seven days.

20                  Q. Okay. Did he tell you he hoped to be out in October  
21                  when the trial came up?

22                  A. Yes, sir. He said they don't have nothing but  
23                  circumstantial evidence on him. They ain't got nothing on him.

24                  Q. Okay. Isn't it true, Mr. Veal, that you told one of  
25                  the Sheriff's deputies in Leflore County you were not coming up  
26                  here and testifying?

27                  A. Did I tell one of the Sheriff's deputies that?

28                  Q. Uh-huh.

29                  A. No, sir, not to my recollection.

1 Q. Do you remember being out in the parking lot one day  
2 last week?

3 A. (Pause) I remember walking down the walkway.

4 Q. Okay.

5 A. Talking to a trusty.

6 Q. Okay, and what was the conversation?

7 BY MR. EVANS: Your Honor, unless he can show  
8 some relevance, we would object.

9 BY MR. BILLY GILMORE: All right, sir.

10 BY THE COURT: Sustained.

11 BY MR. BILLY GILMORE:

12 Q. Mr. Veal, weren't you told if you didn't come testify  
13 today, you would get five years in the penitentiary?

14 A. Was I told that?

15 Q. Yes.

16 A. No, sir.

17 Q. Nobody told you that?

18 A. No. They told me perjury carries 5 years, 5 to 15.

19 Q. Who told you that?

20 A. I have been told that.

21 Q. Who told you that?

22 A. The investigator; told me it carried 5 to 15.

23 Q. Who was that?

24 A. Mr. John just said come up here and be truthful and  
25 straight up. That's what he told me.

26 Q. That is Mr. John Johnson?

27 A. Yes, sir.

28 Q. The investigator with the District Attorney's Office?

29 A. Yes, sir. He said just go up there and tell your

1 side of the story, like that; be truthful.

2 Q. That's what he told you?

3 A. Because you can get perjury charges for lying.

4 Q. Okay. All right, you are saying that after this, Mr.  
5 Flowers told you he went to Texas?

6 A. Started working at Piggly Wiggly.

7 Q. Piggly Wiggly where?

8 A. He just told me Piggly Wiggly in Texas. He went to  
9 Texas and started working at Piggly Wiggly.

10 Q. Did he say when he went to Piggly Wiggly's to work in  
11 Texas?

12 A. He said, told me he work on the morning shift and the  
13 night shift.

14 Q. Okay. But he didn't tell you when he went to Texas?

15 A. No, sir. I ain't ask him.

16 Q. All right, and you are saying also, I believe in your  
17 statement that he told you he smoked up a thousand dollars  
18 worth of crack there the day of this incident?

19 A. He said he smoked some crack.

20 Q. Okay. Well--

21 A. Yeah, I will say a thousand dollars worth. He  
22 started off spending a hundred--

23 Q. --That's what you told Mr. Johnson?

24 A. Yes, sir.

25 Q. That the day after this happened, he smoked a  
26 thousand dollars of crack?

27 A. I don't remember telling him the day after the  
28 thing. He said he smoked up a thousand dollars that month.

29 Q. Are you aware that the police picked him up

1 immediately after this, and they didn't say anything about him  
2 being on crack?

3 A. No, sir. I don't know nothing--

4 BY MR. EVANS: --Your Honor, that is not  
5 relevant, and there is no indication, we have not  
6 been able to go into any of that at this point.

7 BY MR. BILLY GILMORE: He is on  
8 cross-examination, Your Honor.

9 BY MR. EVANS: That is not relevant to this  
10 witness.

11 BY THE COURT: But that doesn't give you a blank  
12 sheet of paper. Sustained.

13 BY MR. BILLY GILMORE: It's going to more or  
14 less to the truthfulness of this witness.

15 BY MR. EVANS: Your Honor, I object to that.  
16 That is completely improper.

17 BY THE COURT: Sustained.

18 BY THE WITNESS:

19 A. (Pause) The only thing I have to say is if a person  
20 do something like that, it's cruel; that is hard. The way  
21 those folks were killed was hard. I don't know; he told me  
22 this. I don't know nothing about all the rest of them, but if  
23 a person do something like that, something gots to be wrong  
24 with him.

25 Q. Didn't you tell him you had done something similar?

26 A. I told him I had a case similar, that I beat it.

27 Q. That you beat?

28 A. (Witness nods his head.)

29 BY MR. BILLY GILMORE: No further questions.

1 REDIRECT EXAMINATION BY MR. EVANS:

2 Q. Mr. Veal, what you have told the jury here today is  
3 exactly the same thing you told Mr. Johnson in your statement;  
4 is that right?

5 A. Yes, sir.

6 Q. And you--

7 A. --I came forward on my own. Didn't nobody ask me to  
8 or nothing. After I got the-- he told me that, I sent a  
9 letter, I need to talk to Mr. Banks.

10 Q. And you volunteered this information to Sheriff Ricky  
11 Banks at Leflore County?

12 A. Yes, sir.

13 Q. And you are here because you were subpoenaed to be  
14 here today; is that correct?

15 A. Yes, sir.

16 Q. Is what you have told this jury here today the truth?

17 A. Exactly what he told me.

18 BY MR. EVANS: Nothing further of this witness,  
19 Your Honor.

20 BY THE COURT: Okay, is he finally excused?

21 BY MR. EVANS: Yes, sir.

22 BY THE WITNESS: I can go?

23 BY THE COURT: Yes, sir.

24 WITNESS EXCUSED.

25 BY THE COURT: Who do you have next?

26 BY MR. EVANS: One minute, Your Honor. We are  
27 trying to get some witnesses on today that don't need  
28 to have to be back tomorrow.

29 BY THE COURT: That will be fine.



1 BY MR. HORAN: James Edward Kennedy.

2 BY THE COURT: Have you been sworn in?

3 BY THE WITNESS: Yes.

4 JAMES EDWARD KENNEDY,

5 a black male called to testify as a witness by the State of  
6 Mississippi, having first been duly sworn, testified as  
7 follows, to-wit:

8 BY THE COURT: State your name for the record,  
9 please.

10 BY THE WITNESS: James Edward Kennedy.

11 DIRECT EXAMINATION BY MR. HORAN:

12 Q. Mr. Kennedy, you need to lean forward and try to  
13 speak into that mike. All the people back here in the corner  
14 have to hear you. I have to hear you. Counsel for the  
15 Defendant has to hear you as well as the Court and the Court  
16 Reporter; okay?

17 A. All right.

18 Q. Mr. Kennedy, where do you live now?

19 A. 635 South Applegate.

20 Q. How long have you lived there?

21 A. I've stayed there about a year.

22 Q. On July the 16th of 1996, were you living at that  
23 residence?

24 A. Yes.

25 Q. Okay, now would you describe where that residence is  
26 in relationship to Highway 51?

27 A. It's down past Wal-Mart. After you pass Richardson  
28 Brothers, it's right there to your left.

29 Q. Okay. Do you work anywhere?

1 A. I work at Golden Age Nursing Home.

2 Q. And where is that located?

3 A. Greenwood.

4 Q. And how long have you worked there?

5 A. About a year and a half.

6 Q. Okay, on July the 16th, 1996, between 7:00 and 7:30  
7 in the morning, did you see Curtis Flowers?

8 A. Yes, sir.

9 Q. Where did you see him?

10 A. He passed by the house.

11 Q. Okay, was he walking, or was he in an automobile?

12 A. He was walking.

13 Q. And in which direction was he walking?

14 A. Towards Angelica's.

15 Q. Towards Angelica's; is that a plant in Winona?

16 A. It's a plant.

17 Q. And would you describe his gait, how he was walking?  
18 Was he walking slow or fast?

19 A. He was walking kind of fast.

20 Q. Do you remember about what time it was that you saw  
21 him to the best of your recollection?

22 A. About 7:15 that morning.

23 Q. It could have been after 7:15?

24 A. It could have been, but my watch said 7:15.

25 Q. Okay. (Laughter) Well, that is a pretty good  
26 indication. Was your watch in pretty good working order at  
27 that time?

28 A. Yes, sir.

29 Q. All right. How long have you known Curtis Flowers?

1 A. Well, I hadn't known him personally.

2 Q. Do you know him when you see him?

3 A. I know him when I see him.

4 Q. Do you know his family?

5 A. I know his family.

6 Q. Do you see Curtis Flowers in the courtroom today?

7 A. Yes, sir.

8 Q. Would you point to him and identify him, please?

9 A. That's him over there.

10 BY MR. HORAN: Your Honor, I would like to have  
11 the record reflect he has identified the Defendant.

12 BY THE COURT: Let the record reflect that fact.

13 BY MR. HORAN: Court will indulge me just one  
14 moment, please.

15 (State's Counsel confer briefly.)

16 BY MR. HORAN:

17 Q. You said your address was 635 Applegate?

18 A. 635 South Applegate.

19 Q. South Applegate. How far is your residence from  
20 Angelica?

21 A. It's not too far.

22 Q. Do you know, you don't have any idea? Two blocks, a  
23 block, or how far?

24 A. Maybe a block.

25 Q. Okay, and you did not see Mr. Flowers any more that  
26 particular day?

27 A. No, sir.

28 Q. How far were you when you saw Mr. Flowers, from him?  
29 In relationship to me and you?

1 A. It's a little bit further than that.

2 Q. (Counsel walks back.) How about right here?

3 A. Approximately.

4 Q. Approximately this far? Approximately 20, 25 feet?

5 A. Right.

6 BY MR. HORAN: I tender the witness for cross,  
7 Your Honor.

8 CROSS-EXAMINATION BY MR. BILLY GILMORE:

9 Q. Mr. Kennedy, I believe they also call you Bo-Jack; is  
10 that right?

11 A. Yes, sir.

12 Q. Did you give a statement to John Johnson?

13 A. Yes, sir.

14 Q. He is the District Attorney's investigator?

15 A. Yes.

16 Q. Do you remember about when this was that you talked  
17 to him?

18 A. Not exactly.

19 Q. Was it several months after this incident at Tardy's  
20 Furniture?

21 A. Several months, no, sir.

22 Q. How far was it?

23 A. I can't quite remember, but it wasn't several months.

24 Q. Okay, was it a couple of months?

25 BY MR. HORAN: Your Honor, he has already asked  
26 and answered the question. He said he couldn't  
27 remember. I object to it. It's cumulative; already  
28 been asked and answered.

29 BY THE COURT: Sustained. He has answered it.

1 BY MR. BILLY GILMORE:

2 Q. Now Mr. Kennedy, I hold in my hand a statement that  
3 evidently you gave to Mr. Johnson on September the 17th of  
4 1996. Does that refresh your memory any?

5 A. September?

6 Q. Yes, sir.

7 A. That's right.

8 Q. That sound about right?

9 A. That's about right.

10 Q. Some couple of months after the incident?

11 A. (Witness nods his head.)

12 Q. Okay. Now what makes you think that you saw Mr.  
13 Flowers on that particular day of July the 16th, 1996, and not  
14 July the 17th or July the 15th or July the 20th?

15 A. What makes me think that?

16 Q. Uh-hum.

17 A. Well, I saw him that morning.

18 Q. Okay, what makes you think it was that particular  
19 morning? How do you recall back two months later to tell Mr.  
20 Johnson that was the day?

21 A. We spoke briefly that morning.

22 Q. Okay, well, I mean couldn't you have spoke briefly  
23 with him on the 18th of July just as well?

24 A. No, sir.

25 Q. Okay, how do you know it was July the 16th, 1996?

26 A. Because that's the morning he came through.

27 Q. Well, you don't know how you recall that?

28 A. I was out on the porch.

29 Q. All right. And you said he came from north going to

1 the south?

2 A. That's right.

3 Q. Okay. Now tell the jury what he had on that morning;  
4 what kind of clothes?

5 A. I can't quite recollect what kind of clothes he had  
6 on, but I know him.

7 Q. Okay. Well, did you tell Mr. Johnson that he had on  
8 a black sweater and white pants?

9 A. Did I tell him that?

10 Q. Did you tell Mr. Johnson that?

11 A. I said I thought that's what he had on.

12 Q. You thought that's what he had on?

13 A. Yeah.

14 Q. Well, now you told Mr. Johnson back in September, but  
15 now you don't remember; is that what you're saying?

16 A. I can't quite remember what kind of clothes, but I  
17 remember him.

18 Q. Okay. Well, if you told Mr. Johnson that back in  
19 September, do you think that would probably be correct back  
20 then? That would be over a year ago.

21 A. About which now? What are you saying?

22 Q. If you told Mr. John Johnson back in September of '96  
23 that you saw Curtis Flowers, he had on a black sweater and  
24 white pants; do you think, would it probably be right what you  
25 told him back then?

26 A. I don't quite understand what you are saying.

27 Q. All right. Do you remember making a statement to Mr.  
28 John Johnson?

29 A. I remember making a statement, yes.

1 Q. Okay. Do you remember telling him that you saw  
2 Curtis Flowers, and he was dressed in a black sweater and white  
3 pants that morning that you saw him?

4 A. To the best of my knowledge, yeah.

5 Q. That's what you told him?

6 A. That's what I told him.

7 Q. Okay. And you said you knew Curtis Flowers, but he  
8 is not a friend of yours or anything like that?

9 A. I know his family.

10 Q. Okay, do you know him?

11 A. Not personally.

12 Q. Well, do you know him if you would see him?

13 A. Yeah.

14 Q. Okay. Do you know what type hat or cap he may have  
15 had on?

16 A. He didn't have on one.

17 Q. Do you know what type shoes he may have had on?

18 A. We didn't talk that long, just a brief thing. He was  
19 in a hurry.

20 Q. Did he stop and talk to you, or just y'all talked as  
21 he passed?

22 A. Talked as he passed.

23 Q. Okay, just normal casual greetings?

24 A. That's right.

25 Q. Didn't go into any conversations other than How are  
26 you? How are you doing, this type thing?

27 A. No, sir.

28 Q. Okay. Were the white pants long or short pants?

29 A. I can't quite remember.

1 Q. But if you told Mr. Johnson back in September '96  
2 they were long, do you think that would probably be right, what  
3 you told him back then?

4 A. Say that again.

5 Q. I said if you told Mr. Johnson back in September '96  
6 that Mr. Flowers had on long white pants, do you think that  
7 would be right?

8 A. Do I think that would be right?

9 Q. Is that what you think you told him back then? If  
10 you told him that, would that be correct, what you told him?

11 A. I told him long pants?

12 Q. Yes.

13 A. (No response).

14 Q. I'm not trying to trick you, Mr. Kennedy. What I'm  
15 saying, if you told Mr. Johnson back in September 1996, you saw  
16 Curtis Flowers with long white pants on, do you think your  
17 memory would be more right then than now?

18 A. I believe they was long.

19 Q. Believe it was long, okay. Black sweater and long  
20 white pants?

21 A. That's right.

22 Q. Don't know what kind of shoes he had on. He didn't  
23 have a hat on; is that correct?

24 A. That's right.

25 Q. And he was walking?

26 A. Yes.

27 Q. And this was about what time now?

28 A. Between, my watch said 7:15.

29 Q. Okay. Now I believe you also told Mr. Johnson you



1 had another way of knowing the time of day because somebody had  
2 to leave for work about that time?

3 A. My sister.

4 Q. And what time did she leave?

5 A. We usually leave 7:15 every morning.

6 Q. And was she there or was she gone?

7 A. She was inside.

8 Q. She was inside; she was still there.

9 BY MR. BILLY GILMORE: Court indulge me one  
10 moment.

11 BY THE WITNESS:

12 A. Excuse me?

13 Q. All right, you said she was in the house?

14 A. That's right.

15 Q. Do you remember making a statement to Mr. Johnson on  
16 in September of '96 that she had already left?

17 A. (Witness shakes his head.) She was inside the house.

18 Q. Okay, so what you told Mr. Johnson back in September,  
19 '96 then is not correct?

20 A. She was getting ready to go.

21 Q. Okay. All right, I read from this. Mr. Johnson:  
22 "Was she still there?" Mr. Kennedy: "She had left."

23 A. I don't remember saying that.

24 Q. You don't remember saying that? But your memory  
25 would be better a year ago than it is now, wouldn't it?

26 A. I don't remember saying that.

27 Q. Okay. You just don't remember?

28 A. Not saying that.

29 Q. Okay. How long have you been working at the Golden

1 Age Nursing Home?

2 A. A year and a half.

3 Q. And when did you start work?

4 A. Sometime in April.

5 Q. April of '96?

6 A. I can't exactly say whether it was '96 or not.

7 Q. Well, if you started in '97, it would be less than a  
8 year, wouldn't it?

9 A. But I been there a year and a half.

10 Q. All right. And what shift do you work?

11 A. Second shift.

12 Q. And what is the second shift?

13 A. 3:00 to 11:00.

14 Q. 3:00 PM to 11:00 PM?

15 A. At night.

16 Q. Okay, and even back when you were working this shift,  
17 you still got up to see your sister off from work every  
18 morning?

19 A. I was carrying her to work.

20 Q. You were carrying her to work?

21 A. Right.

22 Q. So did you carry her to work that morning?

23 A. Yes, sir.

24 Q. Okay, and where does she work?

25 A. Steel Repair in Kilmichael.

26 Q. And where is that?

27 A. It's in Kilmichael.

28 Q. In Kilmichael. And what time is she supposed to be  
29 at work?

1 A. 7:30.

2 Q. 7:30. How far is Kilmichael from Winona?

3 A. Ten miles.

4 Q. Ten miles. And you're saying at 7:20 she was still  
5 inside the house?

6 A. 7:15, she was still inside the house.

7 (Laughter).

8 Q. You carried her to work every morning?

9 A. Sometimes my niece would pick her up.

10 Q. Okay, what about this particular morning?

11 A. I carried her to work.

12 Q. You carried her to work. So what time did you leave  
13 that morning going to Kilmichael?

14 A. About 7:20.

15 Q. Okay. So you are now saying you carried her to work  
16 that morning, and what you told Mr. Johnson back in September  
17 of '96 was incorrect?

18 A. I don't quite understand what you are saying.

19 Q. Well, isn't it true, Mr. Kennedy, you said back in  
20 September '96 that when Curtis Flowers passed your house, she  
21 had already gone to work?

22 A. I don't remember saying that.

23 Q. You don't remember saying that?

24 A. Not that she was already-- I remember saying she was  
25 in the house.

26 Q. Okay. Well, I read this statement to you. Mr.

27 Johnson: "Was she still there?" Mr. Kennedy: "She had left."

28 A. (Witness shakes his head.) He must have  
29 misinterpreted.

1 Q. Misinterpreted, okay.

2 BY MR. BILLY GILMORE: No further questions.

3 REDIRECT EXAMINATION BY MR. HORAN:

4 Q. Mr. Kennedy?

5 A. Yes.

6 Q. Do you remember Mr. Johnson asking you-- I want to  
7 direct your attention back to July the 16th, 1996, the day the  
8 murders occurred at Tardy's store. He asked you, "Do you  
9 remember that day?" And you responded, "Yes." Do you remember  
10 making that statement to him that you remember that day?

11 A. That I remember that day, yes.

12 Q. And "Early that morning did you see Curtis Flowers?"  
13 And you responded "Yes." Do you remember telling him that you  
14 had seen Curtis Flowers on the day of the murders?

15 A. Yes.

16 Q. All right, now Mr. Flowers, after he came by your  
17 house, did he go toward Angelica?

18 A. Yes.

19 Q. Were you really paying attention to what he had on  
20 that much, or were you looking at him?

21 A. I wasn't really paying too much attention.

22 Q. To what he had on?

23 A. To what he had on.

24 Q. But you saw him?

25 A. I saw him.

26 Q. And you know him when you see him?

27 A. Right.

28 Q. No doubt in your mind beyond a reasonable doubt that  
29 that is who you saw that morning, Curtis Flowers?

1           A.    Yes.

2                   BY MR. HORAN:  No further questions.

3                   BY THE COURT:  Is he finally excused?

4                   BY MR. HORAN:  He is, Your Honor.

5                   BY THE COURT:  You are free to go home.

6                   BY MR. HORAN:  As far as the State's subpoena is  
7                   concerned.

8                                   WITNESS EXCUSED.

9                   BY THE COURT:  Who do you have next?

10                  BY MR. EVANS:  Katherine Snow.

11                  BY THE COURT:  Has she been sworn?

12                  BY MR. EVANS:  Were you sworn?

13                  BY THE BAILIFF:  Yes, sir.  She was sworn in.

14                  BY MR. EVANS:  Thank you.

15                               KATHERINE SNOW,

16           a black female called to testify as a witness by the State of  
17           Mississippi, having been previously sworn, testified as  
18           follows, to-wit:

19                   BY THE COURT:  State your name for the record,  
20                   please, ma'am.

21                   BY THE WITNESS:  Katherine Snow.

22           DIRECT EXAMINATION BY MR. EVANS:

23           Q.    Ms. Snow, where do you live?

24           A.    I live Route 1, Box 217, West, Mississippi.

25           Q.    And where is West, Mississippi, in relationship<sup>1</sup> to  
26           Winona?

27           A.    It's between Winona-- well, I really stay in Vaiden.  
28           My mail just comes from West.

29           Q.    Okay, and how far is Vaiden from Winona?

1           A.    Ten miles.

2           Q.    Where-- I want to direct your attention back to July  
3 the 16th of 1996, and ask you where you were working at that  
4 time?

5           A.    Angelica.

6           Q.    And what is Angelica?

7           A.    It's a sewing factory.

8           Q.    And where is it located?

9           A.    It's located in Winona.

10          Q.    And do you know what part of Winona it's located in?

11          A.    Not really. Just on Angelica Drive.

12          Q.    Before you get to Angelica Drive, what road do you  
13 turn off of?

14          A.    It's called the little-- you turn off 51; turn on  
15 that little, it's a little sign that say "Angelica."

16          Q.    All right, is it two different ways you can get in  
17 there?

18          A.    Yes, it is.

19          Q.    One way is to turn off of Highway 51; is that  
20 correct?

21          A.    Uh-hum, my regular route.

22          Q.    All right, and what highway do you turn off of to get  
23 to the other side?

24          A.    Well, you come off 51 on past the, I think it's  
25 called the what, County Barn, and you come on up past  
26 Tuberville. Then there is a trailer park right across from you  
27 that you turn; instead of turning, well, you turn right there  
28 at the trailer park; it's Angelica.

29          Q.    All right, if you were going from the 51 side, would

1 you go east of Highway 51 to get to Angelica?

2 A. I'm not familiar with that. My--

3 Q. --You are not good on directions?

4 A. Uh-hum.

5 Q. All right. What time did you go to work at Angelica  
6 on the morning of these murders?

7 A. What time did I leave home? I leave home normally  
8 around about 6:30, and I get to Angelica mostly around about  
9 the time, about five minutes, ten to five minutes to 7:00.

10 Q. All right, do you know a person and work with a  
11 person by the name of Doyle Simpson?

12 A. Yes, I do.

13 Q. Do you know what type of vehicle he drives?

14 A. Yes, I know.

15 Q. Did you have an occasion any time that morning to see  
16 anyone around his vehicle?

17 A. Yes, I did.

18 Q. Was this after you had found out that something had  
19 happened with his vehicle?

20 A. I seen it that morning between 7:00 and 7:30.

21 Q. Okay, and will you describe-- well, let me just ask  
22 you this. What was the person doing that you saw around Doyle  
23 Simpson's vehicle?

24 A. Just leaning against the front end of the car.

25 Q. And did you tell police officers about this person  
26 that you had seen leaning against the vehicle?

27 A. I told them after, you know, that I had realized that  
28 something, you know, that something had happened.

29 Q. Okay, and after you realized something had happened,

1 did you pick this person out of a photo lineup?

2 A. Yes, I did.

3 Q. Had you ever seen this person before?

4 A. Yes, I have.

5 Q. So you knew who the person was?

6 A. I was familiar about the face, but I couldn't think  
7 of the name.

8 Q. All right. Do you see the person in the courtroom  
9 today that you saw on the day of the killings leaning against  
10 Doyle Simpson's car?

11 A. Yes.

12 Q. Would you point to him and identify him, please?

13 A. Curtis Flowers over there.

14 BY MR. EVANS: May the record reflect that she  
15 has identified the Defendant, Curtis Flowers?

16 BY THE COURT: Let the record reflect that.

17 BY MR. EVANS: I will tender the witness.

18 CROSS-EXAMINATION BY MR. BILLY GILMORE:

19 Q. Ms. Snow, how long have you worked at Angelica?

20 A. Well, I was-- all my years together is five, but I  
21 had quit for a while because of sickness with my child. Then I  
22 went to Summers and worked down at Summers. When Summers went  
23 out of business, I went back to Angelica in January of '95.

24 Q. So you have been there every since?

25 A. Uh-huh.

26 Q. Now why did you come back out in the parking lot that  
27 particular morning?

28 A. To move my car because the back end was in the road.  
29 There was trucks, there was a big truck that was coming around,



1 and my back end was mostly lying in the road, so I went to move  
2 it before it got hit.

3 Q. You had gotten to work a little late that morning and  
4 didn't park it right?

5 A. Uh-huh; I was running a little late that morning.  
6 Well, the car in front of me was pulled up too far.

7 Q. All right. Now you said you saw this person leaning  
8 against Doyle Simpson's car?

9 A. Yes, I did.

10 Q. What kind of car does Doyle Simpson have?

11 A. It's a little brown, I'm not familiar with names of  
12 cars. I just never been into that, but I know the car when I  
13 see it, but as far as what kind of car, name of them, I don't  
14 know.

15 Q. It was a small brown car?

16 A. Uh-hum. But I know his car.

17 Q. Is the car usually dirty and nasty?

18 A. Talking about Doyle's car?

19 Q. Yes.

20 A. Not really. Well, you know, I never really paid that  
21 much attention about how his car looked.

22 Q. Well, does it have a lot of dust on it when he comes  
23 to work?

24 A. I never paid that much attention to it.

25 Q. Paid much attention to it? The person you said you  
26 saw out there, what was he doing?

27 A. Just leaning against the front end of the car.

28 Q. He wasn't going in the car or anything like that?

29 A. Nothing out of the ordinary.

- 1 Q. Did he seem nervous?
- 2 A. No.
- 3 Q. Just standing there?
- 4 A. Yes. I spoke; he spoke, and I went on about my
- 5 business.
- 6 Q. Okay, he didn't try to hide himself when you walked
- 7 out there?
- 8 A. No, he didn't.
- 9 Q. Didn't try to run off?
- 10 A. No, he didn't.
- 11 Q. Y'all greeted one another?
- 12 A. Uh-hum.
- 13 Q. And when you went on back in, he was still out there?
- 14 A. No, he wasn't.
- 15 Q. He left?
- 16 A. He wasn't there.
- 17 Q. Where did he go?
- 18 A. I have no idea.
- 19 Q. How long were you out in the parking lot?
- 20 A. Just long enough to move my car and back it on the--
- 21 my car was like the second spot from the end, and I backed, put
- 22 it on, back under the trees, and I walked back down and went on
- 23 in the plant.
- 24 Q. Okay, now what time was this you walked out?
- 25 A. Between 7:00 and 7:30.
- 26 Q. Between 7:00 and 7:30?
- 27 A. Uh-hum.
- 28 Q. Okay, but you moved your car and the person you saw
- 29 was gone?

1           A.    Uh-hum.  That's right.

2           Q.    And all he was doing was leaning up against Doyle  
3 Simpson's car?

4           A.    That's all.

5                   BY MR. BILLY GILMORE:  No further questions.

6                   BY THE COURT:  Redirect.

7                   BY MR. EVANS:  Nothing on redirect of this  
8 witness, Your Honor.

9                   BY THE COURT:  Is she finally excused?

10                  BY MR. EVANS:  Yes, sir.

11                  BY THE COURT:  Ms. Snow, you are free to go.

12                                   WITNESS EXCUSED.

13                  BY THE COURT:  Who do you have next?

14                  BY MR. EVANS:  Maurice Hawkins.

15                  BY THE COURT:  Mr. Hawkins, have been sworn in?  
16 Raise your right hand, sir.

17                                   **MAURICE BERNARD HAWKINS,**

18 a black male called to testify as a witness by the State of  
19 Mississippi, having first been duly sworn, testified as  
20 follows, to-wit:

21                   BY THE COURT:  Have a seat up here.  State your  
22 name for the record.

23                   BY THE WITNESS:  Maurice Bernard Hawkins.

24                   BY MR. EVANS:  May I proceed?

25 DIRECT EXAMINATION BY MR. EVANS:

26           Q.    Mr. Hawkins, I want to direct your attention back to  
27 a time that I believe you were in jail with Curtis Flowers.  Do  
28 you remember that time?

29           A.    Yes, sir.

1 Q. Do you remember Curtis Flowers making any admissions  
2 to you about having killed the people at Tardy Furniture?

3 A. Yes, sir.

4 Q. What did he tell you?

5 A. Well, we was up one night playing solitaire, and he  
6 said that, "Man, I hate I did that." So, you know, my mind is  
7 on the cards. I'm thinking he is talking about the cards.  
8 Then he said, like I said, he said, "Man, I hate I did that."  
9 And I'm like, "Did what?" He said he hate he had to kill his  
10 own cousin. So I asked him, I said, "Why did you kill all of  
11 them?" And he said it was something personal. And then I  
12 asked him about the money in the safe. I heard about some  
13 money that was in a safe in the back. So I asked him why  
14 didn't he get the money. He said, "It wasn't about the money.  
15 It was just something personal." So I asked him, I was wanting  
16 to know. I said, "What kind of gun did you use?" And he said  
17 it was a .380. He said he wasn't worried about being convicted  
18 because don't nobody know what he done, he said, and he was  
19 just waiting on October so he can go home.

20 Q. Okay, and he told you those things?

21 A. Yes, sir.

22 Q. Before he told you that one of the people he killed  
23 was his own relative, did you know that Robert Golden was  
24 related to him?

25 A. No, sir.

26 BY MR. EVANS: Tender the witness.

27 CROSS-EXAMINATION BY MR. BILLY GILMORE:

28 Q. Where did this happen, Mr. Hawkins?

29 A. In Leflore County Jail.

1 Q. And when did you make this statement?

2 A. It was, it was around the first of July.

3 Q. Okay. And who did you tell?

4 A. I wrote a letter to Sheriff Ricky Banks.

5 Q. Okay. And two days later you were released from  
6 jail, weren't you?

7 A. Well, I had went to court on July the 3rd.

8 Q. But after you told the Sheriff this, you got a deal  
9 cut for you, did you not?

10 A. No, sir. I had went to work court and was sentenced  
11 after I talked to Ricky Banks about it.

12 Q. Okay. But you didn't do any time after you made this  
13 statement to the Sheriff up there?

14 A. Yes, sir. I am on time now. I am on three years  
15 house arrest.

16 Q. Okay. Isn't it true that you are on one year house  
17 arrest?

18 A. Yeah, one year house arrest, two years-- well, I was  
19 sentenced to three years.

20 Q. But the only thing you have got to do is one year on  
21 house arrest?

22 A. And two years probation.

23 Q. Okay. House arrest means you have to be at the house  
24 at certain times?

25 A. I have to be at the house at all times when I'm not  
26 working.

27 Q. And you said something about his own cousin?

28 A. Yes, sir.

29 Q. Are you sure that's what he said?

1 A. Exactly what he said.

2 Q. Well, would it surprise you that Robert Golden and  
3 Curtis Flowers are not cousins?

4 A. Well, I just, that's what he told me.

5 Q. Did you plead guilty to the charge?

6 A. My charge? Burglary?

7 Q. Yes.

8 A. Yes, sir.

9 Q. But you wasn't sentenced until after you made this  
10 statement?

11 A. No, I was sentenced before I made that statement.

12 Q. You were sentenced on July the 3rd of '97?

13 A. Yes, sir. And I talked to the investigator, it was  
14 August the 27th.

15 Q. When was this alleged statement supposed to have been  
16 made to you?

17 A. Excuse me?

18 Q. When was this alleged statement supposed to have been  
19 made to you? When?

20 A. I don't understand what you are saying.

21 Q. Well, you said Mr. Flowers made this statement to  
22 you. When did he make this statement to you?

23 A. Oh, it was, like I said, it was around July the 1st.

24 Q. Okay. And you were released on July the 3rd from  
25 jail?

26 A. I went to the parole, parole board where they placed  
27 me on house arrest.

28 Q. Well, isn't it true you were sentenced on July the  
29 3rd?

1           A.    Yes, I was sentenced.

2           Q.    Just two days after you had made a statement to the  
3 Sheriff about--

4           A.    --No.  I never talked to the Sheriff until after I  
5 had left court, but I sent him a note.

6           Q.    You sent him a note saying that's what Mr. Flowers  
7 told you?

8           A.    I'm sent him a note, told him I needed to talk to him  
9 about Curtis Flowers.

10          Q.    And he talked to you?

11          A.    He talked to me after I left court.  When they was  
12 taking me to the Mississippi State Corrections, Department of  
13 Corrections to be placed on house arrest.  I talked to him  
14 before they took me over there.  That was after I was  
15 sentenced.

16          Q.    You are sure about your times?

17          A.    Yes, sir.

18                   BY MR. BILLY GILMORE:  No further questions.

19           REDIRECT EXAMINATION BY MR. EVANS:

20          Q.    Maurice, you had already been sentenced for your  
21 crime before you ever sent a note to Sheriff Ricky Banks; is  
22 that correct?

23          A.    Before I ever sent a note?

24          Q.    Right.

25          A.    Well, I had been sentenced before I ever talked to  
26 him.

27          Q.    All right.  So you had nothing to gain by telling him  
28 about this crime because your case was over at that point; is  
29 that right?

1 A. Yes, sir.

2 Q. And it was a month after you had been sentenced  
3 before you talked to my investigator; is that right?

4 A. Yes, sir. I was getting off work one morning, and  
5 they picked me up and told me that an investigator wanted to  
6 talk to me.

7 Q. Is what you have told this jury that Curtis Flowers  
8 told you the truth?

9 A. Yes, sir.

10 BY MR. EVANS: Nothing further of this witness,  
11 Your Honor.

12 BY THE COURT: Is he finally excused?

13 BY MR. EVANS: Yes, sir; Your Honor, he is.

14 BY THE COURT: You are free to go.

15 WITNESS EXCUSED.

16 BY THE COURT: Who will you have next?

17 BY MR. HORAN: Edward McChristian.

18 BY MR. EVANS: Your Honor, can you give us an  
19 idea of how late we are going to go today?

20 BY THE COURT: Well, I was going to let y'all  
21 give me that idea. Why don't y'all come up here and  
22 let's see.

23 BY MR. EVANS: We are at the Court's disposal.

24 BY THE COURT: That will be a first.

25 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
26 THE JURY AS FOLLOWS:)

27 BY MR. HORAN: How about 5:15? They are tired..

28 BY THE COURT: I know, and everybody else is,  
29 but you are one that asked to go to 6:00.



1 BY MR. EVANS: This is a fairly short witness.  
2 This would be a good quitting place if you wanted to  
3 quit--

4 BY THE COURT: It's okay with me. I wanted  
5 y'all to give me some guide on--

6 BY MR. EVANS: We have got about five or six  
7 more witnesses that are wanting to testify today, but  
8 there is no way we can get all of them on. So--

9 BY MR. HORAN: They are moving pretty quick.

10 BY MR. EVANS: One thing we are going to ask the  
11 Court to do is after the jury is dismissed is have  
12 the witnesses brought in here and direct all of them  
13 that they are under subpoena to be back because three  
14 of them have said they are not coming back.

15 BY THE COURT: Yeah, okay. I will be glad to do  
16 that.

17 BY MR. BILLY GILMORE: We have no objection.

18 BY THE COURT: Are all of these witnesses short  
19 like this, what we have been doing?

20 BY MR. HORAN: It's going to be pretty short.  
21 Several--

22 BY MR. BILLY GILMORE: I have no objection to  
23 doing one more--

24 BY THE COURT: Huh?

25 BY MR. BILLY GILMORE: I said I have no  
26 objection to doing one more, but not four or five  
27 more.

28 BY THE COURT: Well, he said-- none of y'all  
29 want to. What I want to do, and I will concede. We

1 will do one more, and then we will quit.

2 END BENCH CONFERENCE.

3 BY THE COURT: Has he been sworn?

4 BY THE BAILIFF: Yes, sir.

5 EDWARD McCHRISTIAN,

6 a black male called to testify as a witness by the State of  
7 Mississippi, having first been duly sworn, testified as  
8 follows, to-wit:

9 BY THE COURT: State your name for the record,  
10 please, sir.

11 BY THE WITNESS: Edward Lee McChristian.

12 DIRECT EXAMINATION BY MR. HORAN:

13 Q. Mr. McChristian, where do you live?

14 A. 603 Academy.

15 Q. Where is that located in relationship to the Angelica  
16 plant? Is it north or south of it?

17 A. North of it.

18 Q. And how far would it be north of Angelica?

19 A. A little above 47, across 47.

20 Q. Okay, and is that a couple of blocks, three blocks?  
21 How far? How long would it take you to walk from your house to  
22 Angelica if you were just going to walk down there?

23 A. Uh, maybe 7 or 8 minutes.

24 Q. And how do you get to Angelica-- if you were leaving  
25 Angelica and coming to your house, how would you leave Angelica  
26 to get to your house?

27 A. Well, I would come up the street that Angelica is on.  
28 all the way up to 47, take a right, come all the way down to  
29 Academy.

1 Q. And you live at 603 Academy?

2 A. Right.

3 Q. I want to direct your attention to July the 16th,  
4 1996, the day of the incident at the Tardy Furniture store. Do  
5 you remember that day?

6 A. Yes, I do.

7 Q. Do you remember seeing Curtis Flowers on the early AM  
8 hours of that particular day?

9 A. Yes, sir.

10 Q. In the early AM hours?

11 A. Yes.

12 Q. And do you remember approximately what time you saw  
13 him?

14 A. Well, it was between 7:30 and 8 o'clock.

15 Q. And which direction was he headed; toward Angelica or  
16 away from Angelica?

17 A. He was coming south. He was coming south on Academy  
18 going north.

19 Q. And where were you when you saw him?

20 A. Sitting on my porch.

21 Q. And who was with you?

22 A. Clarence Forrest and Bernard Seals.

23 Q. Did you speak to Mr. Flowers?

24 A. I didn't.

25 Q. Do you know Mr. Flowers when you see him?

26 A. Yes, I know him when I see him.

27 Q. Do you see him in the courtroom today?

28 A. Yes.

29 Q. Would you point to him, please?

1 A. Right there. (Witness points.)

2 Q. How long have you known him? You are not friends, I  
3 assume?

4 A. No, no.

5 Q. But you know him when you see him. How long have you  
6 known him?

7 A. Pretty good while.

8 Q. So you don't remember how long?

9 A. No, I don't.

10 Q. He was headed from the direction of Angelica headed  
11 north?

12 A. Right.

13 Q. Do you remember exactly what he had on? Do you  
14 remember the clothing he had on?

15 A. No, I can't remember the clothing.

16 BY MR. HORAN: I tender the witness.

17 CROSS-EXAMINATION BY MR. BILLY GILMORE:

18 Q. Mr. McChristian, it wasn't anything unusual to see  
19 Curtis Flowers walking up Academy Street, was it?

20 A. No, sir.

21 Q. You see him on a regular basis?

22 A. No, not really regular, but I have seen him come  
23 through there a few times.

24 Q. So it is nothing unusual about him walking up Academy  
25 Street?

26 A. No, sir.

27 Q. Are you absolutely sure this is the exact day you saw  
28 him, or could it have been the day before or the day after?

29 A. It was the morning.

1 Q. That morning? Okay. But you had seen him going up  
2 that way before then?

3 A. Well, I have seen him; it wasn't no regular time. It  
4 was just a few times I have seen him.

5 Q. Have you seen him go up that way since July 16th--

6 A. No, I haven't.

7 Q. --of '96. But you saw him going up that way several  
8 times prior to July the 16th of '96?

9 A. Yes.

10 Q. Okay. And you don't remember what kind of clothes he  
11 had on?

12 A. No, I can't remember.

13 Q. Was he walking, running, riding?

14 A. He was walking.

15 Q. Did he have anything in his hands?

16 A. No, I didn't see anything in his hands.

17 Q. Any bulges in his pocket?

18 A. I couldn't tell.

19 Q. Couldn't tell. Did you see anything seem different  
20 from him that day than any other day you saw him walking up  
21 that street?

22 A. No, I didn't see no different.

23 BY MR. BILLY GILMORE: No further questions.

24 BY MR. HORAN: No further questions, Your Honor.

25 BY THE COURT: You are finally excused. You may  
26 go home.

27 WITNESS EXCUSED.

28 BY MR. HORAN: Can we confer just a second?

29 BY THE COURT: Yes.

1 (State's Counsel confer briefly.)

2 BY MR. EVANS: Your Honor, if the Court is ready  
3 to quit for the day, this is a point that we could  
4 stop.

5 BY MR. BILLY GILMORE: That suits us too, Your  
6 Honor.

7 BY THE COURT: See, they are laying it back on  
8 me. Okay, we will quit. We made pretty good  
9 progress today, so we will quit for the day, and the  
10 bailiffs, of course, will take you back to your rooms  
11 and get you fed and whatever. I will give you the  
12 same instructions I have given you at all of these  
13 breaks. You cannot form an opinion yet. You must  
14 not confer amongst yourselves about this case. You  
15 must not allow anybody to confer with you about it or  
16 allow anybody to talk to you about it in your  
17 presence. Now y'all don't have televisions, do you?

18 BY SEVERAL JURORS: No, sir.

19 BY THE COURT: Okay. I'm going to see about  
20 making some arrangements for, to have a television  
21 room. I have been advised by the Court Administrator  
22 up here that they have done that up here in the past  
23 where you can have a television where y'all can watch  
24 that under the supervision of a bailiff.

25 BY A JUROR: We do have that.

26 BY THE COURT: You did that? Okay, well, that  
27 is fine. Anything else either side wants?

28 BY MR. EVANS: No, Your Honor.

29 BY MR. BILLY GILMORE: No, Your Honor.

1                   **BY THE COURT:** Okay, see y'all in the morning.  
2                   JURY LEFT THE COURTROOM AT 4:55 P.M.  
3                   (Witnesses were brought into the courtroom.)

4                   **BY MR. EVANS:** If I can get you to direct them  
5                   that they have to be back tomorrow under their  
6                   subpoena.

7                   **BY THE COURT:** Let me make this statement to all  
8                   of you that have received a subpoena in this case.  
9                   We have gone as far as we can go today. Those of you  
10                  who did not testify today will probably testify  
11                  tomorrow. You are required to be back here, and you  
12                  must be back here and ready to testify if you are  
13                  called by 9 o'clock in the morning. Okay.

14                  COURT RECESSED FOR THE DAY ON OCTOBER 14, 1997  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

1 (COURT WAS REOPENED ON WEDNESDAY, OCTOBER 15,  
2 1997, AT 9:00 A.M. WITH THE COURT, ALL COUNSEL, THE  
3 DEFENDANT, AND THE JURY BEING PRESENT FOR THE  
4 FOLLOWING:)

5 BY THE COURT: Good morning. Who will you have  
6 first?

7 BY MR. EVANS: Jack Matthews.

8 BY THE CLERK: Was he sworn?

9 BY THE COURT: He was here yesterday.

10 BY MR. EVANS: Yeah, I am sure he was, but it  
11 wouldn't hurt to just ask him to make sure.

12 (Witness enters courtroom.)

13 BY THE COURT: Mr. Matthews, you have been  
14 sworn, haven't you?

15 BY THE WITNESS: Yes, sir.

16 BY THE COURT: All right, have a seat up here.

17 JACK MATTHEWS,

18 a white male called to testify as a witness by the State of  
19 Mississippi, having first been duly sworn, testified as  
20 follows, to-wit:

21 BY THE COURT: State your name for the record,  
22 please, sir.

23 BY THE WITNESS: Jack Matthews.

24 BY MR. EVANS: May I proceed, Your Honor?

25 BY THE COURT: Yes, sir.

26 DIRECT EXAMINATION BY MR. EVANS:

27 Q. Mr. Matthews, how are you employed?

28 A. I am an investigator with the Mississippi Highway  
29 Patrol.



1 Q. And how long have you been with the Mississippi  
2 Highway Patrol?

3 A. I am working on my 24th year.

4 Q. And what rank do you hold?

5 A. I'm a Lieutenant in District Two.

6 BY THE COURT: You need to speak up, Mr.  
7 Matthews. That mike may not carry far enough. You  
8 need to speak up so that lady at the end of the jury  
9 box can hear you.

10 BY THE WITNESS: Yes, sir.

11 BY MR. EVANS:

12 Q. Of course, I know your duties cover the entire state,  
13 but primarily what counties do you work?

14 A. I work counties out of the Greenwood office in that  
15 ten county area that goes from the river to the eastern border  
16 which would be Montgomery and Attala and Grenada County.

17 Q. All right, and you were working in that capacity on  
18 July the 16th, 1996; is that correct?

19 A. Yes, sir. I was.

20 Q. Were you called by anyone to assist in a crime scene  
21 at Tardy Furniture in Montgomery County?

22 A. Yes, I was.

23 Q. Approximately what time did you arrive at the crime  
24 scene?

25 A. It was approximately 11 o'clock.

26 Q. All right, did anyone else from your office also  
27 either come with you or come at approximately the same time?

28 A. Lieutenant Miller arrived just a little bit after I  
29 did.

1 Q. And in what capacity was he in at that time? Also an  
2 investigator?

3 A. Right.

4 Q. Mr. Matthews, when you first arrived at the scene,  
5 what did you notice?

6 A. Well, there were three victims that appeared to have  
7 been slain by gunshot wounds. There was some hulls lying on  
8 the floor. There was, an area had been roped off by the  
9 officers with the Winona Police Department who had arrived  
10 earlier. There was, of course, blood all over the floor. The  
11 three victims are lying on the floor, and there was some  
12 information that there had been another victim there that had  
13 been carried to the hospital.

14 Q. All right. Did you proceed to have a unit come from  
15 the State Crime Lab to assist in recovering evidence?

16 A. Yes. The Winona Police Department had notified the  
17 Crime Lab before I arrived, and they were on the way. I was  
18 notified of that after I arrived.

19 Q. And was Melissa Schoene the head expert with the lab  
20 that arrived to help recover evidence?

21 A. Yes, sir.

22 Q. Mr. Matthews, was part of your investigation in this  
23 case talking to and interviewing witnesses?

24 A. Yes, sir. It was.

25 Q. And without going into what different people told  
26 you, I can't ask you that at this point, but did you interview  
27 numerous witnesses about this case?

28 A. Yes, sir. I did.

29 Q. Did you also have an occasion on the morning of these

1 murders to talk with and interview the Defendant in this case,  
2 Curtis Flowers?

3 A. I did interview him, but it was in the afternoon.

4 Q. In the afternoon? Approximately what time?

5 A. It was approximately 1:30.

6 Q. Okay. Approximately, rounding it off, about 3 hours  
7 after the murders had been reported; is that right?

8 A. Right. It was about two and a half hours after I  
9 arrived.

10 Q. Was he a suspect at that particular time?

11 A. Not at that time. He was not.

12 Q. Okay, did you already have some information about the  
13 fact that he had worked at the store at that time?

14 A. Right. Some of our interviews with individuals and  
15 family members after I arrived, we established that he had been  
16 employed there a few weeks before.

17 Q. Okay. Did you have an occasion to advise him of what  
18 is normally known as Miranda rights?

19 A. Right. We were interviewing him at the Winona Police  
20 Department, and he was picked up and brought to the Winona  
21 Police Department for questioning. And it's our policy to  
22 advise him of his rights before we question him.

23 Q. Who was present and assisted you in interviewing  
24 him?

25 A. Investigator with the DA's Office, John Johnson, and  
26 also Lieutenant Wayne Miller with the Mississippi Highway  
27 Patrol.

28 Q. And after you advised him of his Miranda rights, did  
29 he appear to understand those rights?

1 A. Yes, he did, and he signed a waiver.

2 Q. Do you have that waiver with you?

3 A. I believe I have previously given it to your office.

4 Q. I would like to hand you Exhibit 103 and ask you if  
5 you can identify this, please.

6 A. This is the waiver of rights that was signed on the  
7 16th.

8 Q. And I think I have asked you this, but to make sure I  
9 cover it for the record, did he appear to understand those  
10 rights?

11 A. Yes, sir; he did.

12 Q. And did you also advise him of the waiver on that  
13 rights form?

14 A. Yes, sir. I did.

15 Q. And did he sign that statement agreeing to talk with  
16 you at that time?

17 A. Yes, sir. He did.

18 BY MR. EVANS: Your Honor, I offer this exhibit  
19 into evidence.

20 BY MR. JOHN GILMORE: No objection, Your Honor.

21 BY THE COURT: Let it be marked.

22 (WAIVER OF RIGHTS SIGNED ON THE 16TH PREVIOUSLY  
23 MARKED AS STATE'S EXHIBIT S-103 FOR IDENTIFICATION  
24 WAS NOW RECEIVED IN EVIDENCE.)

25 BY MR. EVANS:

26 Q. Officer Matthews, after you had advised the Defendant  
27 of his rights, did you, in fact, take a statement from him at  
28 that time?

29 A. I did not take a taped or written statement. I made

1 notes while we were talking, asking him about his employment at  
2 Tardy Furniture and the reason that he was not working there  
3 now and his whereabouts on that day.

4 Q. Tell us to start with what he told you about his  
5 employment with Tardy Furniture?

6 A. He told us that he had been employed there on, he had  
7 started working on Saturday; I believe it was June the 29th.  
8 He had worked that day and that he had worked the following  
9 Monday, Tuesday, and half a day on Wednesday. And on Wednesday  
10 morning Mrs. Tardy had instructed him to pick up some  
11 batteries. I believe it was a total of 5 batteries from a  
12 business there in Winona, and he stated that he loaded those  
13 batteries on the back of the truck, and as he was driving away,  
14 the batteries fell over and 3 of them broke; and that she did,  
15 she was, told him that if the store wouldn't make the batteries  
16 right where they had purchased them, then he would be  
17 responsible for paying for those batteries since he didn't load  
18 them and tie them down on the back of the truck.

19 Q. All right. Did he tell you later whether he ended up  
20 having to pay for those batteries or not?

21 A. He stated that he was supposed to, that after he got  
22 off on Wednesday, which was the 3rd of July, he was supposed to  
23 come back to work on the 5th, which the 4th being Thursday was  
24 a holiday. He was supposed to come back on the 5th. He did  
25 not show up on the 5th, nor did he show up on Saturday, the  
26 6th, and that the last conversation he had with Ms. Tardy was  
27 on the telephone on, I believe the following Tuesday when he  
28 called her and asked her if he still had a job. And she told  
29 him that no, he did not have a job any more, that she couldn't

1 use him, and he asked her did he have any money coming, and she  
2 said no, that the cost of the batteries had eaten up the amount  
3 of money that he had coming to him.

4 Q. All right, did he tell you whether he had gotten an  
5 advance on his paycheck before he left?

6 A. He told me that on that Wednesday before the 4th that  
7 right before he was to leave, that she asked him did he need  
8 any money. And he told her yes; he needed about \$30.00 and  
9 that she advanced him \$30.00 on that Wednesday afternoon.

10 Q. So he had gotten \$30.00 out of the check that he had  
11 coming, and she refused to pay him the balance because of the  
12 damage he had done; is that correct?

13 A. According to his testimony.

14 Q. Did you recover a check made out to him for that work  
15 period that had been held there at the store?

16 A. I did. The date of the 16th, I recovered it from  
17 Mrs. Tardy's desk.

18 Q. I would like to hand you Exhibit 102 and ask you if  
19 you can identify this, please.

20 A. This is a check that I found laying on her desk in  
21 her office there at the furniture store.

22 Q. And can you tell from that check that it was a  
23 payroll check made payable to the Defendant?

24 A. That's what it appears to be.

25 Q. And does that payroll check match what he told you  
26 about the work that he had worked for her that she was holding  
27 the check on?

28 A. That's approximately the amount of hours that he said  
29 that she owed him for.

1 BY MR. EVANS: Your Honor, I offer this exhibit  
2 into evidence.

3 BY MR. JOHN GILMORE: No objection, Your Honor.

4 BY THE COURT: Let it be admitted.

5 (CHECK DATED 7/5/96 FOR \$82.58 TO CURTIS FLOWERS  
6 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-102 FOR  
7 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

8 BY MR. EVANS:

9 Q. Officer Matthews, after he told you that she told him  
10 that his services would no longer be needed, what else did he  
11 tell you?

12 A. He said that that was all the conversation that he  
13 had with her, that they hung up the phone and that he had not  
14 talked with her since.

15 Q. What did he say to you about whether or not he had  
16 been to the scene or what parts of town he had been in that  
17 morning of the murders?

18 A. He said that he had gotten up that morning and had,  
19 was living with his girlfriend and her two children. His  
20 girlfriend had gotten up that morning and gone to work, that he  
21 had stayed home, was baby sitting that morning, and that  
22 sometime later that morning he had left the house and gone to  
23 his sister's house who lived on Dennis Street which is just  
24 approximately a block from where he was staying, and that he  
25 stayed there for just a few minutes, and after he left there,  
26 he walked down to Kelly's Stop and Go which is on Highway 51  
27 there in Winona.

28 Q. All right. Now Officer Matthews, since this trial is  
29 being tried away from Montgomery County, most of the people

1 here probably are not familiar with Montgomery County. Can you  
2 describe how Highway 51 comes through Winona?

3 A. Well, Highway 51 runs north and south. And it's on  
4 the, it runs right through the middle of Winona, not through  
5 the town area, but it's a north and south highway, and it's on  
6 the east side of Highway 55.

7 Q. All right, the town area is on-- well, 51 is on the  
8 east side of 55. The town area would be on the east side of  
9 51; is that correct?

10 A. That's correct.

11 Q. And Angelica factory is also on the east side of 51;  
12 is that correct?

13 A. Yes, sir; that's correct.

14 Q. Now where the Defendant was living with his  
15 girlfriend, and what is her name?

16 A. Uh.

17 Q. Connie?

18 A. Connie.

19 Q. Where he was living with her is on the west side of  
20 51; is that correct?

21 A. That's correct.

22 Q. And all of the locations that he told you that he  
23 went that morning, the store and to Dennis Street, all of those  
24 locations are on the west side of 51; is that right?

25 A. That's correct.

26 Q. What did he tell you, if anything, about ever being  
27 on the east side of Highway 51 that morning?

28 A. He said that he was not on the east side of 55--  
29 correction, 51 that morning.



1 Q. Did you ask him any questions about whether or not he  
2 had fired a weapon that day?

3 A. Yes, I did.

4 Q. And what was his response to that?

5 A. He said he had not fired a weapon, and he did not own  
6 one.

7 Q. Did you use any type of kits to try to make a  
8 determination of whether he had fired a weapon that day?

9 A. After we completed our interview, I asked him if he  
10 would submit to a gunshot residue kit, and he advised me that  
11 he would. And before he left that day from the police  
12 department, I swabbed his hands with the instructions of the  
13 gunshot residue kit and obtained the sample.

14 Q. All right, let me stop you here in the middle of the  
15 statement for a minute so I can take it step by step. I want  
16 to hand you Exhibit 87 and ask you if you can identify what  
17 this exhibit is?

18 A. This is the gunshot residue kit that I used to take a  
19 sample from Curtis Flowers.

20 Q. And would you describe to the jury how you used that  
21 gunshot residue kit. Would it be easier if you opened it and  
22 demonstrated to them, or can you explain it to them with it  
23 closed?

24 A. I can do it either way.

25 Q. All right, just explain it to them with it closed  
26 then.

27 A. Okay. Inside the gunshot residue kit there are four  
28 vials, and the sample on those vials that you take out, you--  
29 there is also in those four vials there is one for your right

1 back of your hand, this area, the right palm area, and then  
2 also across here, and the left back and the left palm. And  
3 after you swab each one of them, you place it back in the  
4 cannister. Also inside here is an instruction sheet, a step by  
5 step instruction sheet of how you do this. And also, there is  
6 an information sheet in there where you write down the  
7 defendant's name that you are taking and all the pertinent  
8 information that goes along with that.

9 Q. What precautionary steps did you take before  
10 recovering this kit to make sure that the sample was a  
11 protected sample?

12 A. Well, you, of course, the individual that is taking  
13 the sample, the first instruction is to wash your hands.

14 BY MR. BILLY GILMORE: Your Honor, I'm going to  
15 object unless that's what he did.

16 BY MR. EVANS:

17 Q. Just explain what you did so we can get around the  
18 objection.

19 A. I washed my hands. I used rubber gloves before I  
20 opened the kit. I took the vials out of the kit, swabbed the  
21 suspect's, the back right of his hand first, the palm, his left  
22 back of his hand and the left palm; placed them back; sealed up  
23 the kit; and submitted it to the Crime Lab.

24 Q. Okay. And did you take the kit yourself to the Crime  
25 Lab?

26 A. Yes, I did.

27 Q. And did you request that an expert with the State  
28 Crime Lab test that kit to see if the Defendant had fired a gun  
29 that day?

1 A. Yes, I did.

2 Q. And do you know if Joe Andrews was the expert with  
3 the State Crime Lab that did, in fact, make those tests?

4 A. Yes, he did.

5 Q. All right. Let's get back to the statement or  
6 statements that the Defendant made to you. At the time you  
7 were interviewing the Defendant, did you already know about the  
8 bloody tennis shoe track in the store?

9 A. Yes, I did.

10 Q. And I don't know if you can see them from here. Let  
11 me bring this around. (Brings easel around with State's  
12 Exhibits S-73 through S-76 on it.) Can you see the exhibit  
13 from where you are?

14 A. Yes, sir.

15 Q. Melissa Schoene has testified that these were the  
16 pictures that she recovered from the store. Does this appear  
17 to be the same bloody tennis shoe tracks that you saw in the  
18 store that morning?

19 A. Yes, sir. They do.

20 Q. And you were already familiar with these tracks at  
21 the time you interviewed the Defendant?

22 A. That's correct.

23 Q. At the time you interviewed him, did you know, in  
24 fact, what type of tennis shoe had made these tracks?

25 A. No, I did not.

26 Q. And again, let me go into another area so that I can  
27 make sure I cover it too. Did you, in fact, as an investigator  
28 with the Mississippi Highway Safety Patrol, request that an  
29 expert with the Mississippi Crime Laboratory test these bloody

1 tennis shoe tracks to make a determination of specifically what  
2 type and brand shoe and size shoe left these tracks?

3 A. Yes, sir. I did.

4 Q. And did Joe Andrews also make those comparisons and  
5 give you a report?

6 A. Yes, sir.

7 Q. All right, back to the statement, did you talk with  
8 the Defendant Curtis Flowers about what type of tennis shoes he  
9 had?

10 A. Yes, I did.

11 Q. What did he tell you?

12 A. The day that we interviewed him, the 16th, the first  
13 day we interviewed him, he had a pair of white, I believe they  
14 were Nike tennis shoes. And we looked at the pattern of them  
15 while he was down there at the police department, and we  
16 recovered those shoes from him.

17 Q. Did the pattern match on those shoes?

18 A. No, they did not.

19 Q. What size were those shoes?

20 A. I believe they were ten and a half.

21 Q. And you did, in fact, go ahead and send those shoes  
22 to the Crime Lab?

23 A. Yes, sir.

24 Q. And they definitely tested the size of them; is that  
25 correct?

26 A. Yes.

27 Q. All right, what else did he tell you about any other  
28 shoes that he had?

29 A. Later during that time we recovered a pair of shoes

1 from the house, the apartment where he was staying, and he told  
2 us that those were the only two pair of tennis shoes that he  
3 had.

4 Q. And what type shoes were those?

5 A. I don't remember the brand name of them.

6 Q. They were not Fila's; is that correct?

7 A. No, they were not.

8 Q. Was a Fila shoe box later recovered from his house  
9 that he was living in?

10 A. Yes, sir; it was.

11 Q. And do you remember the type of Fila shoes that that  
12 box belonged to?

13 A. I believe it was some Grant Hill Fila tennis shoes,  
14 and I believe they were size ten and a half.

15 BY MR. EVANS: One moment, Your Honor.

16 (Mr. Evans shows package to Counsel opposite.)

17 BY MR. EVANS:

18 Q. Do you know if the Fila shoe box that was recovered  
19 from where the Defendant was living, the Fila Grant Hill size  
20 ten and a half box was sent to the Crime Lab also?

21 A. Yes, it was sent.

22 Q. And was it sent for the purpose of an expert at the  
23 Crime Lab determining if the shoes that came in that box were  
24 the exact same size and kind and style as the shoe that left  
25 this impression?

26 A. Yes, sir.

27 Q. Did you or Wayne Miller either one recover a new pair  
28 of Fila Grant Hill size ten and a half shoes for the Crime Lab  
29 to also look at them to make a determination from the soles if

1 the same soles were the soles that were on the impressions?

2 BY MR. BILLY GILMORE: Your Honor, we are going  
3 to object to the term "recover."

4 BY MR. EVANS:

5 Q. Did you go buy a pair? Is that better?

6 A. Officer Miller secured a pair of shoes matching that  
7 description and submitted those to the lab.

8 Q. Was that after the lab had seen the box and requested  
9 an exact pair to look at?

10 A. That's correct.

11 Q. I hand you Exhibit 89, which I believe is the pair of  
12 shoes that was bought, and I ask you to examine that exhibit if  
13 you would.

14 A. (Witness complies.)

15 Q. Can you tell us what that exhibit is?

16 A. Okay. This is the new pair of tennis shoes that  
17 Officer Miller secured and submitted to the lab.

18 Q. And I'm not asking what the lab report was; the  
19 expert will have to testify to that, but did the Crime Lab give  
20 you a report of their opinion of whether or not the shoes from  
21 that box were consistent with the tracks that you found?

22 A. Yes, sir; they were.

23 Q. At the time that you interviewed the Defendant, were  
24 you already aware of what caliber hulls had been recovered from  
25 the scene?

26 A. Yes, sir; I was.

27 Q. And what caliber hulls had been recovered?

28 A. .380.

29 Q. Did you have an occasion on the morning or evening of

1 the murders, the day of the murders, to talk with anyone that  
2 claimed to have had a .380 that morning?

3 A. We received information just after I arrived at the  
4 scene that someone had reported to the Winona Police Department  
5 that they had had a .380 caliber gun stolen from their car at  
6 Angelica. This is a factory there in Winona.

7 Q. Who was the person that had reported his .380 stolen?

8 A. Doyle Simpson.

9 Q. Did you have an occasion to interview Doyle Simpson  
10 about his gun being taken?

11 A. Yes, I did.

12 Q. And were you able to determine from talking to Doyle  
13 Simpson whether or not he was related to the Defendant?

14 A. We discovered that some time later on that afternoon,  
15 that Mr. Simpson was related to the Defendant.

16 Q. And the weapon that he had taken out of his vehicle  
17 was the same caliber as the hulls that had been recovered?

18 A. Yes, sir.

19 Q. Did you attempt to make any effort to determine who  
20 had taken the gun from his car?

21 A. We interviewed individuals there at the factory to  
22 see if anyone saw anyone there around Mr. Simpson's car. He  
23 stated that the gun was in his car when he had left for work  
24 that morning, and after he had arrived, that he believed--

25 BY MR. BILLY GILMORE: --Your Honor--

26 BY THE WITNESS:

27 A. --the gun was taken sometime after he arrived--

28 BY MR. BILLY GILMORE: --I'm going to object to  
29 hearsay.

1                   **BY THE COURT:** Sustained.

2           **BY MR. EVANS:**

3           Q.    All right, you can't go into what you were told.  
4           Just did you talk to anyone there at the scene to determine who  
5           might have taken the weapon?

6           A.    Right. We talked to a lady by the name of Katherine  
7           Snow.

8           Q.    And did she give you a statement?

9           A.    She did; yes.

10          Q.    Did she also look at a photo lineup?

11          A.    Yes, she did.

12          Q.    And was he able to positively identify someone from  
13          that--

14                   **BY MR. BILLY GILMORE:** --Your Honor, that is  
15                   cumulative. The witness has already testified.

16                   **BY THE COURT:** Pardon?

17                   **BY MR. BILLY GILMORE:** I said that is cumulative  
18                   testimony. The witness has already testified as to  
19                   what she saw and did.

20                   **BY THE COURT:** Overruled.

21           **BY MR. EVANS:**

22          Q.    You may answer.

23          A.    Yes. Ms. Snow did give, gave us a statement and also  
24          picked him out of a lineup.

25          Q.    And "him," who are we referring to?

26          A.    The Defendant.

27          Q.    Were you able to at any way make a determination, or  
28          what efforts did you use to try to make a determination of  
29          whether the weapon that was taken from Doyle Simpson's car was,



1 in fact, the murder weapon?

2 A. Yes, sir. We talked with Mr. Simpson, and he advised  
3 us that--

4 BY MR. BILLY GILMORE: --Object, Your Honor;  
5 hearsay.

6 BY THE COURT: He can't testify as to what Mr.  
7 Simpson said.

8 BY MR. EVANS:

9 Q. Just tell us what you did in response to your  
10 questioning?

11 A. We determined that this weapon had been fired out at  
12 Doyle Simpson's mother's house out on Poor House Road. He  
13 stated that there was a post out there that they had done some  
14 target practicing with this weapon and that there should be  
15 some hulls in that, there should be some projectiles in that  
16 post.

17 Q. All right, and did you yourself recover a projectile  
18 from that post that he told you he had shot into?

19 A. Yes, sir. I did.

20 Q. How many projectiles were recovered from that post?

21 A. There were two projectiles recovered.

22 Q. Investigator Matthews, I want to hand you Exhibits 85  
23 and 86. If you will, examine them and tell me what those two  
24 exhibits are?

25 A. Okay. Exhibit 58 is one projectile.

26 Q. Now is that the red exhibit number?

27 A. No. Excuse me.

28 Q. You need to go by the Court exhibit number.

29 A. Exhibit number 61 [sic] was one projectile that was

1 recovered on July the 19th by Bill Thornburg, who is a deputy  
2 with the Winona Sheriff's Department--

3 BY MR. BILLY GILMORE: --Your Honor, I'm going  
4 to object--

5 BY THE WITNESS: --correction, Montgomery--

6 BY MR. BILLY GILMORE: --to what someone else  
7 recovered if he didn't recover it.

8 BY THE COURT: Well, he may have to clarify; if  
9 he was there, he can testify to it. Do you want to  
10 ask him that question, Mr. Evans?

11 BY MR. EVANS:

12 Q. Were you present when that projectile was recovered?

13 A. No, sir. I was not.

14 Q. Was it turned over to you?

15 A. Yes, it was.

16 BY MR. EVANS: Your Honor, we are not offering  
17 this into evidence at this point. While this witness  
18 is on the stand, I need to cover the chain on it. We  
19 are not going to offer this one at this point.

20 BY THE COURT: Okay, go ahead.

21 BY MR. EVANS:

22 Q. And was that projectile turned over to you?

23 A. Yes, sir. It was.

24 Q. And--

25 A. --I--

26 Q. I'm sorry; I didn't mean to interrupt you.

27 A. And I submitted it to the lab on July the 29th.

28 Q. All right, let me make sure I have got the exhibit  
29 number right on my notes. This number is the Court number.

1 That is 86 on this one?

2 A. Okay. Excuse me.

3 Q. And this is 85.

4 A. Okay.

5 Q. 86 and 85. All right, which exhibit number were you  
6 just testifying from?

7 A. This is Exhibit 86.

8 Q. All right. Exhibit 85, would you identify it?

9 A. Okay. This is one projectile that I recovered on  
10 August the 1st from a post at the Simpson residence there on  
11 Poor House Road in Montgomery County.

12 Q. And you personally recovered that one?

13 A. Yes, sir. I did.

14 Q. And did you also deliver it to the Crime Lab?

15 A. Yes, sir. I did.

16 Q. And what steps did you take to have someone examine  
17 these two projectiles?

18 A. Entered them both into the lab and requested firearms  
19 examinations against the projectiles that we recovered at the  
20 scene.

21 Q. All right. Let me go back to the scene. The day of  
22 the crime, the State Crime Lab sent someone up to assist in  
23 evidence recovery; is that correct?

24 A. That's correct.

25 Q. On that particular day was all of the evidence  
26 recovered that day, or did y'all go back at a later time and  
27 recover some evidence?

28 A. We recovered some evidence at a later date from the  
29 scene of the crime.

1 Q. And the evidence that y'all later recovered--

2 BY MR. BILLY GILMORE: --Your Honor, I'm going  
3 to object unless he was present there when it was  
4 recovered.

5 BY THE COURT: Well, that's what he asked him.

6 BY MR. EVANS: That's exactly what I asked him.

7 BY MR. BILLY GILMORE: He is saying "we."

8 BY THE COURT: Well, "we" would include him.

9 BY MR. EVANS: Thank you, Your Honor.

10 BY MR. EVANS:

11 Q. The time that y'all went back, who went back to the  
12 scene just to clear it up?

13 A. All right. It was myself, Lieutenant Wayne Miller,  
14 investigator with the DA's department, John Johnson, and  
15 Investigator Robert Jennings.

16 Q. And both of the last two are with the District  
17 Attorney's Office?

18 A. That's correct.

19 Q. The four of y'all went back to attempt to recover  
20 other evidence; is that what you're saying?

21 A. Yes, sir.

22 Q. At the time-- let me go back into what I was trying  
23 to ask you a minute ago. The time that y'all went back, was  
24 this before or after you had finally received the autopsy  
25 reports?

26 A. I believe I had already received the autopsy reports  
27 at that time.

28 BY THE COURT: Keep your voice up, Mr. Matthews.

29 BY THE WITNESS: Okay.

1 BY THE COURT: It's sinking on me a little bit.

2 BY THE WITNESS: Yes, sir.

3 BY MR. EVANS:

4 Q. What evidence was recovered at that point?

5 A. Okay. We recovered another spent projectile there at  
6 the scene, and we also recovered the bank bag that we had been  
7 looking for.

8 Q. All right, and the other projectile that was  
9 recovered, if you would, describe for us where it was recovered  
10 from?

11 A. It was recovered from a mattress that was in the back  
12 of the store near where we found the body of Mrs. Tardy.

13 Q. Had anything been noticed about where that bullet was  
14 recovered on the date of the crime?

15 A. It's my understanding that, that the Crime Lab  
16 personnel had information that there was probably one more  
17 projectile in the store that they hadn't found, and I don't  
18 know that they located the whereabouts of this one while they  
19 were there or whether it was just, it was not located at that  
20 time.

21 Q. All right. Was that projectile along with all the  
22 other projectiles that were recovered from the scene and  
23 recovered by anyone else, Dr. Hayne, submitted to the State  
24 Crime Lab for comparison with the two projectiles that you  
25 carried that were taken out of the post?

26 A. I didn't understand your question.

27 Q. All right. Were all the projectiles from the scene  
28 taken to the Crime Lab?

29 A. Yes, sir.

1 Q. Were they carried for comparison purposes with the  
2 two known projectiles that y'all recovered from the post?

3 A. Yes, sir. They were.

4 Q. And was Steve Byrd, an expert with the State Crime  
5 Lab, asked to make that comparison?

6 A. Yes, sir. He was.

7 Q. And was he able to make that comparison?

8 A. Yes, sir.

9 Q. And did he give you a report?

10 A. Yes, sir. He did.

11 Q. The two exhibits, 85 and 86 that are in front of you,  
12 who sealed those exhibits?

13 A. I sealed them.

14 Q. And who carried them to the Crime Lab?

15 A. I carried them.

16 Q. And do they both appear now, the packages, to be in  
17 substantially the same condition as they were when you carried  
18 them other than being opened and resealed by the lab?

19 A. That's correct.

20 Q. And the gunshot residue kit, if you would, pick it  
21 back up, please, sir. What exhibit number was on it?

22 A. Exhibit number 87.

23 Q. And who sealed that exhibit?

24 A. I sealed it.

25 Q. And who delivered it to the Crime Lab?

26 A. I did.

27 Q. And does it appear to be substantially in the same  
28 condition at this point other than what the Crime Lab did as it  
29 did when you sealed it?

1           A.    Yes, sir.

2                   BY MR. EVANS:   Your Honor, I would offer Exhibit  
3                   89 which was the known shoes that were bought and  
4                   taken to the lab for comparison into evidence at this  
5                   point.

6                   BY THE COURT:   Any objection?

7                   BY MR. BILLY GILMORE:   No objection.

8                           (FILA TENNIS SHOE BOX CONTAINING A NEW PAIR OF  
9                   SHOES PREVIOUSLY MARKED AS STATE'S EXHIBIT S-89 FOR  
10                  IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.  THE  
11                  SACK CONTAINING THE BOX WAS MARKED AT THIS TIME, BUT  
12                  AS WILL BE LATER NOTED, THE BOX ITSELF WILL LATER BE  
13                  MARKED AND SUBSTITUTED FOR THE SACK.)

14                  BY MR. EVANS:   May I have the Court's indulgence  
15                  for just a minute.

16                           (State's Counsel confer briefly.)

17       BY MR. EVANS:

18                  Q.    I want to hand you Exhibit 106 and ask you if you can  
19                  identify this exhibit, please, sir?

20                  A.    I recovered this from the desk at the furniture store  
21                  on the morning of the 16th.

22                  Q.    And can you describe what that exhibit is?

23                  A.    It appears to be the cash on hand for the day or  
24                  ledger sheet that they fill out every day describing how much  
25                  money they started with that day.

26                  Q.    And does it appear to be in the same condition now as  
27                  it was in at the time you recovered it?

28                  A.    Yes, sir; it is.

29                           BY MR. EVANS:   Your Honor, I offer this exhibit

1                   into evidence.

2                   BY THE COURT: Objection?

3                   BY MR. JOHN GILMORE: No, Your Honor.

4                   BY THE COURT: What was that number?

5                   BY THE WITNESS: 106.

6                   (DAILY LEDGER WORK SHEET DATED 7/15/96  
7                   PREVIOUSLY MARKED AS STATE'S EXHIBIT S-106 FOR  
8                   IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

9 BY MR. EVANS:

10           Q. I would like to hand you Exhibit 101 and ask you if  
11           you can identify this exhibit?

12           A. This is the bank bag that we found, I believe it was  
13           on August the 13th when we went back down to the store at the  
14           same time we recovered the projectile from the mattress.

15           Q. And who carried that bag to the Crime Lab?

16           A. I did.

17           Q. Who sealed it up?

18           A. I did.

19           Q. And had that bank bag been described to y'all earlier  
20           by any witnesses?

21           A. Yes, it had.

22           Q. Who were they?

23           A. We had information that that morning that Ms. Rigby  
24           had made a deposit at the Sunburst Bank-- correction, at the  
25           Union Planters Bank in Winona and that she had had a gray bank  
26           bag with her at that time. This was prior to finding the  
27           victims in the store.

28                   BY MR. EVANS: Your Honor, I offer this exhibit  
29                   into evidence.



1 BY MR. BILLY GILMORE: No objection.

2 BY THE COURT: All right. Let it be admitted.  
3 Once again, Mr. Evans, which number is that? I'm  
4 sorry.

5 BY MR. EVANS: 101, Your Honor.

6 (BROWN SACK CONTAINING GRAY MONEY BAG WHICH WAS  
7 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-101 FOR  
8 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

9 BY MR. EVANS:

10 Q. I now hand you Exhibit 84 and ask you if you can  
11 identify this exhibit?

12 A. (Pause) This is the projectile that we recovered from  
13 the mattress at Tardy Furniture Company.

14 Q. And were you present when that projectile was  
15 recovered?

16 A. Yes, sir. I was. (Clears throat) Yes, sir. I was.

17 Q. Who sealed the projectile in that container?

18 A. I did.

19 Q. And whose initials are on that box?

20 A. Mine may be on this box, but it has got the evidence  
21 tape where it has been resealed, and I can't see it.

22 Q. Okay. But you remember sealing that box up?

23 A. Yes, sir.

24 Q. And who was present when that was recovered?

25 A. Lieutenant Wayne Miller; DA investigator, John  
26 Johnson and Robert Jennings.

27 Q. And would you explain to the jury how y'all went  
28 about recovering that exhibit?

29 A. We located the hole in the plastic. We got some

1 rubber gloves. I believe Mr. Johnson did, and we were able to  
2 cut open the mattress and locate this projectile.

3 Q. And that particular exhibit there, did you ask that  
4 the State Crime Lab test that projectile to determine if it was  
5 consistent with having been fired out of the same gun that  
6 Doyle Simpson had fired into the post?

7 A. Yes, sir.

8 Q. And did they make that comparison?

9 A. Yes, sir. They did.

10 BY MR. EVANS: Your Honor, I offer this exhibit  
11 into evidence.

12 BY MR. JOHN GILMORE: No objection, Your Honor.

13 BY THE COURT: That is 84; right?

14 BY THE WITNESS: 84, yes, sir.

15 BY THE COURT: Let it be marked.

16 (ONE SMALL WHITE BOX CONTAINING PROJECTILE  
17 REFERRED TO ABOVE WHICH WAS PREVIOUSLY MARKED AS  
18 STATE'S EXHIBIT S-84 FOR IDENTIFICATION WAS NOW  
19 RECEIVED IN EVIDENCE.)

20 BY MR. EVANS:

21 Q. So I can keep my numbers straight. I will now hand  
22 you Exhibits 38, 38A, 39, 39A, 40, 40A, 37A-- 37 and 37A, 49,  
23 49A, 50, 50A, 51 and 51A, 52 and 52A and ask you to look at all  
24 of these exhibits if you would. And as you are looking at  
25 them, I would like for you to compare the corresponding slides  
26 and see if they show the same things that the pictures do?

27 A. (Pause while witness complies.)

28 BY THE COURT: Let me see y'all up here just a  
29 second.

1 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
2 THE JURY AS FOLLOWS:)

3 BY THE COURT: Y'all have all seen these  
4 pictures, and you have all seen the slides. You  
5 should know whether or not they correspond or not.  
6 We could save some time if you have got something you  
7 specifically object to, let's go to them. Otherwise,  
8 let's just offer this stuff and get it admitted.

9 BY MR. EVANS: Do y'all have any objection on  
10 any of these?

11 BY MR. BILLY GILMORE: Are you sure it's the  
12 same?

13 BY MR. EVANS: Yeah. You have looked at them.

14 BY THE COURT: Well, I mean you have looked at  
15 them.

16 BY MR. BILLY GILMORE: We haven't looked at the  
17 slides, but we have looked at the pictures. If he  
18 assures us they are the same, we have no objection.

19 BY THE COURT: I would assume that you would  
20 have looked at the slides. Do you want to go through  
21 them like this?

22 BY MR. BILLY GILMORE: We have no-- if he  
23 assures us that they are one and the same, then we  
24 will not object to putting it in evidence.

25 BY MR. EVANS: They are.

26 BY THE COURT: Of this group of pictures that he  
27 is offering, do you have any objection to them?

28 BY MR. BILLY GILMORE: No, Your Honor.

29 BY THE COURT: Okay. Let's just ask they be

1 admitted.

2 END BENCH CONFERENCE.

3 BY MR. EVANS: (To the witness) Those numbers?

4 BY THE WITNESS: 52, 52A, 51, 51A, 50 and 50A,  
5 49 and 49A, 40 and 40A, 39 and 39A, 38 and 38A.

6 BY MR. EVANS: Your Honor, at this point before  
7 we go further, the State will offer into evidence,  
8 Exhibits 37, 37A, 38, 38A, 39, 39A, 40, 40A, 49, 49A,  
9 50, 50A, 51, 51A, 52 and 52A.

10 BY THE COURT: No objection?

11 BY MR. BILLY GILMORE: No objection.

12 BY MR. JOHN GILMORE: No, Your Honor.

13 BY THE COURT: Okay, let them be admitted.

14 (PHOTOGRAPHS AND CORRESPONDING SLIDES PREVIOUSLY  
15 MARKED AS STATE'S EXHIBITS S-37, S-37A, S-38, S-38A,  
16 S-39, S-39A, S-40, S-40A, S-49, S-49A, S-50, S-50A,  
17 S-51, S-51A, S-52, S-52A FOR IDENTIFICATION WERE NOW  
18 ALL RECEIVED IN EVIDENCE.)

19 (Slides were put in the projector and shown on  
20 the wall.)

21 BY THE COURT: Can y'all see it okay?

22 BY ONE JUROR: I can't quite.

23 BY SEVERAL OTHER JURORS: Yes.

24 BY THE COURT: Okay, the jury thinks they can  
25 see it okay.

26 BY MR. EVANS:

27 Q. Officer Matthews, Exhibit 37A, can you explain to the  
28 jury what that shows?

29 A. That was a fresh missing paint nick there on that

1 column inside the store at the end of the yard stick.

2 Q. In this area right in here?

3 A. Right.

4 Q. And in relationship to that fresh nick in the paint,  
5 where was Ms. Bertha Tardy lying?

6 A. She was just at the end of the mattress being the, on  
7 the, right in that area right there.

8 Q. Back in this area right here? (Pointing on  
9 projection on wall with laser pointer.)

10 A. Yes, sir.

11 Q. And which mattress did y'all recover the projectile  
12 from?

13 A. That lower mattress on that, upper mattress there on  
14 the end of the bed, on that bed there.

15 Q. On this bed right here?

16 A. Yes, sir.

17 Q. How did it appear that the projectile had entered  
18 into the mattress?

19 A. Had gone through the plastic and into the bedding  
20 area.

21 Q. Exhibit 38A, can you identify this?

22 A. That is just depicting that nick on that column.

23 Q. Is this the same nick here that you have previously  
24 described to the jury?

25 A. Yes.

26 Q. 39A, is this just a closer picture of the same  
27 mattress and nick in the wall?

28 A. Yes, sir.

29 Q. And 40A, is this still a closer photograph of the

1 same nick?

2 A. Yes, sir.

3 Q. 49A, can you tell us what this is?

4 A. That is just showing the area where we recovered the  
5 projectile in the mattress.

6 Q. And can the projectile be seen that you recovered in  
7 that photograph?

8 A. Yes, sir.

9 Q. Is this the projectile right here?

10 A. Yes, sir.

11 Q. And is this the same projectile that you have  
12 described that was in the box up here on the table?

13 A. Yes, sir.

14 Q. Exhibit 50A, is this the same projectile?

15 A. Yes, sir.

16 Q. 51A?

17 A. Yes, sir.

18 Q. This is just a closer picture of the same projectile  
19 being removed?

20 A. Yes, sir.

21 Q. And 52A?

22 A. Yes, sir.

23 Q. That is the projectile that was removed from the  
24 mattress?

25 A. Yes, sir.

26 (Cuts off projector.)

27 Q. Officer Matthews, was this the only projectile that  
28 was recovered in the area of Bertha Tardy?

29 A. Yes, sir. It was.

1 Q. You described earlier or were describing earlier how  
2 you took a couple of different statements at different times  
3 from the Defendant; is that correct?

4 A. Yes, sir.

5 Q. Did he at any point change where he said he was at  
6 different times?

7 A. No, sir. He did not.

8 Q. And he never at any point admitted being anywhere on  
9 the east side of Highway 51 that morning?

10 A. No, sir. He did not.

11 Q. He specifically denied being anywhere on the east  
12 side?

13 A. That's correct.

14 Q. And he never admitted having any Fila Grant Hill  
15 tennis shoes?

16 A. Not to my knowledge.

17 BY MR. EVANS: Exhibit 87, the gunshot residue,  
18 Your Honor, we would move into evidence at this time.

19 BY MR. JOHN GILMORE: No objection.

20 BY THE COURT: Let it be marked.

21 (GUNSHOT RESIDUE KIT PREVIOUSLY MARKED AS  
22 STATE'S EXHIBIT S-87 FOR IDENTIFICATION WAS NOW  
23 RECEIVED IN EVIDENCE.)

24 BY MR. EVANS: Also Exhibit 85, which was the  
25 projectile that this witness personally recovered  
26 from the post, we would offer into evidence at this  
27 time.

28 BY MR. BILLY GILMORE: Which exhibit, Your  
29 Honor?

1 BY THE COURT: 85.

2 BY MR. BILLY GILMORE: Is that the one he  
3 recovered?

4 BY THE COURT: Yeah. 86 was the one Mr.  
5 Thornburg recovered.

6 BY MR. BILLY GILMORE: No objection.

7 BY THE COURT: Let it be marked.

8 (BROWN ENVELOPE CONTAINING PROJECTILE REFERRED  
9 TO ABOVE WHICH WAS PREVIOUSLY MARKED AS STATE'S  
10 EXHIBIT S-85 FOR IDENTIFICATION WAS NOW RECEIVED IN  
11 EVIDENCE.)

12 BY MR. EVANS: One second, Your Honor.

13 (State's Counsel confer briefly.)

14 BY MR. EVANS:

15 Q. In the different statements that the Defendant gave  
16 you, were there any differences in the times that he gave you  
17 that he was at different locations?

18 BY MR. BILLY GILMORE: Your Honor, that question  
19 has been asked and answered.

20 BY MR. EVANS: No, sir. He was asked about  
21 different locations earlier, not the times.

22 BY THE COURT: No, he wasn't; that is true.  
23 Overruled.

24 BY THE WITNESS:

25 A. When we first interviewed him on the afternoon of the  
26 16th, and then we reinterviewed him on the 18th; there was some  
27 differences in the time that he told us that he had gone to his  
28 sister's house and had gone to Kelly's One Stop.

29 Q. And would you explain those differences to the jury?



1           A.    Okay.  When we interviewed him on the 16th, he stated  
2   that he had gone there earlier in the morning, sometime around  
3   9 to 10 o'clock, and then later when we interviewed him on the  
4   18th, when we tape recorded his statement, he stated that he  
5   hadn't left the house until after 11:00.

6           Q.    All right, were you able through your investigation  
7   to make a determination of how much money was missing from the  
8   cash drawer in the store?

9           A.    After we got some clarification on the ledger sheet  
10   that you showed me earlier, we determined that approximately  
11   \$287--

12                   BY MR. BILLY GILMORE:  --Your Honor, I'm going  
13                   to object--

14   BY THE WITNESS:

15           A.    --was missing.

16                   BY MR. BILLY GILMORE:  I don't think the proper  
17   predicate has been laid to show how he can determine  
18   this, if he can at all.

19                   BY MR. EVANS:  I will be glad to go through it.  
20   I just asked him if his investigation showed him, and  
21   he has described the ledger sheet.

22                   BY THE COURT:  You are going to have to tell how  
23   he would know that because it would appear he would  
24   have to know it by hearsay, and there may be some  
25   other way, but you will have to lay the predicate for  
26   him to testify to that.

27   BY MR. EVANS:

28           Q.    Did you use the ledger sheet that you were given to  
29   help you determine that?

1           A.    Yes, sir. We did.

2           Q.    And did you also talk with Roxanne Ballard about the  
3 normal operating procedures, and did she explain to you how to  
4 read that ledger sheet?

5                   BY MR. BILLY GILMORE: Your Honor, I'm going to  
6 enter the same objection.

7                   BY MR. EVANS: Just wait.

8                   BY MR. BILLY GILMORE: What the normal procedure  
9 was is not the test here. It's what happened that  
10 particular morning.

11                  BY MR. EVANS: Your Honor, it's not hearsay--

12                  BY THE COURT: --But that is the test though for  
13 what he is asking now. She apparently was asked to  
14 tell him how the ledger sheet, what the significance  
15 of that was on any given day, and so how he could  
16 interpret the ledger sheet, so that's overruled.

17                  BY MR. BILLY GILMORE: It's hearsay too, Your  
18 Honor.

19                  BY MR. EVANS: Your Honor, we are not asking if  
20 what she said was there. All we are asking is for  
21 his investigation after he was advised how to read  
22 the ledger sheet. That is not hearsay.

23                  BY THE COURT: It's not, and it's overruled.

24 BY MR. EVANS:

25           Q.    You may answer.

26           A.    We determined that there was approximately 287  
27 dollars missing from the cash drawer.

28           Q.    Did you ever at any point go to Connie Moore's house  
29 where the Defendant was living?

1 A. Yes, I did.

2 Q. And were you present when any money was found in that  
3 house?

4 A. Yes, I was.

5 Q. How much money was found in that house?

6 A. I did not find the money. I was present when it was  
7 found. Officer Miller located that money and secured it and  
8 documented it, and I'm not sure as to exactly how much money  
9 was found.

10 Q. All right, officer Miller would have to testify as to  
11 the exact amount?

12 A. Yes, sir.

13 Q. Did you see where he recovered the money from?

14 A. No, sir. I did not.

15 BY MR. EVANS: I tender the witness, Your  
16 Honor.

17 CROSS-EXAMINATION BY MR. BILLY GILMORE:

18 Q. Mr. Matthews, throughout this investigation, would  
19 you say that the Defendant, Curtis Flowers, cooperated with you  
20 fully?

21 A. Yes, sir.

22 Q. Every time you called on him, he responded?

23 A. Yes, sir.

24 Q. Only some three to four hours after the discovery of  
25 this crime, you interviewed him?

26 A. Yes, sir.

27 Q. He cooperated with you at that time?

28 A. Yes, sir.

29 Q. How was he dressed that day?

1           A.    He had on a knit shirt.  He had on some blue wind  
2 breaker type pants that were cut off at the knee and had on a  
3 pair of tennis shoes.

4           Q.    Okay, at that time did you request that he deliver  
5 the shoes to you?

6           A.    Yes, sir.  I did.

7           Q.    And he complied with that wish?

8           A.    Yes, sir.  He did.

9           Q.    Did you recover any clothes from him on that day?

10          A.    No, sir.  I did not.

11          Q.    Now Mr. Matthews, I believe you said you arrived  
12 there around 11 o'clock, at the crime scene?

13          A.    Yes, sir.

14          Q.    And you interviewed Curtis Flowers at 1:30 P M?

15          A.    Approximately.

16          Q.    All right, sir.  Now at that time during that  
17 vicinity of time, within the day or two range there, did you  
18 not have other suspects you interviewed?

19          A.    We interviewed some other individuals; yes, sir.

20          Q.    Was Doyle Simpson one of those suspects?

21          A.    We interviewed Mr. Simpson.

22          Q.    Was he a suspect?

23          A.    Well, at that time there were numerous suspects.

24          Q.    Well, did you consider Doyle Simpson a suspect at  
25 that time?

26          A.    Mr. Simpson had reported his .380 gun missing, and we  
27 interviewed him.  We thought that was significant that it was  
28 missing at the same day that this crime occurred.  And yes,  
29 sir, we did interview him and ascertained his whereabouts.

1 Q. All right, sir. Did you interview him yourself, Mr.  
2 Matthews?

3 A. Yes, sir. I did.

4 Q. Did you find out whether or not he told you the truth  
5 when you interviewed him the first time?

6 A. There was some discrepancies in some of the  
7 interviews we had with him. I don't know that they were  
8 significant as to relating to whether he had committed these  
9 crimes or not.

10 Q. All right, sir. Did you ask him where he had  
11 purchased this gun that was reported stolen?

12 A. Yes, sir. I did.

13 Q. And what was his response?

14 BY MR. EVANS: Your Honor, at this point I  
15 believe Doyle Simpson would be the one that had to  
16 respond to the things that he said. He will be a  
17 witness here.

18 BY THE COURT: Sure, and that is hearsay.  
19 Sustained.

20 BY MR. BILLY GILMORE:

21 Q. All right, Mr. Matthews, did you find out later that  
22 the statement that Mr. Simpson made to you at that time--

23 BY MR. EVANS: --Your Honor, again this is not--

24 BY MR. GILMORE:

25 Q. --was not the same?

26 BY MR. EVANS: --relevant to the crime that we  
27 are here on, and it's hearsay.

28 BY MR. BILLY GILMORE: Your Honor--

29 BY MR. EVANS: --He can go into that at a later

1 point.

2 BY MR. BILLY GILMORE: He said he was a suspect,  
3 was a suspect at the time. It is part of his  
4 investigation.

5 BY MR. EVANS: He has got to lay a proper  
6 predicate, and Doyle Simpson will have to testify  
7 before that can be laid. He will be a witness here.  
8 We are going to call him.

9 BY MR. BILLY GILMORE: Well, Your Honor, if he  
10 interviewed him twice and he told two different  
11 stories, he can testify to that.

12 BY MR. HORAN: He can't just stand up here and  
13 make arguments in front of this jury. I object to  
14 that.

15 BY THE COURT: Well, it is all hearsay.  
16 Sustained.

17 BY MR. BILLY GILMORE:

18 Q. Did you determine where Mr. Simpson purchased the  
19 gun?

20 BY MR. EVANS: Your Honor.

21 BY THE COURT: I think I just sustained that  
22 objection.

23 BY MR. EVANS: I thought you did too.

24 BY MR. BILLY GILMORE:

25 Q. Mr. Matthews, in your investigation did you measure  
26 distances from points throughout the town, from like where Mr.  
27 Flowers lived to Tardy's Furniture and from Angelica to Tardy's  
28 Furniture? Did you make measurements?

29 A. Yes, sir. We did.

1 Q. How far-- well, first let me ask you this. Where did  
2 Mr. Flowers live at the time this investigation started?

3 A. He lived with his girlfriend, Connie Moore. I'm not  
4 sure of the street.

5 Q. Would it have been McNutt Street?

6 A. That sounds, possibly could be.

7 Q. I believe it's what is commonly known as The Project?

8 A. He lived in an apartment there.

9 Q. Okay, so how far is Mr. Flowers' apartment to Tardy's  
10 Furniture store?

11 A. The exact distance?

12 Q. Approximately. If you know the exact, I would like  
13 to know the exact distance.

14 A. The approximate distance, I would say approximately a  
15 mile.

16 Q. Okay. Could be a little more than that?

17 A. Possibly.

18 Q. So you didn't actually measure the distance?

19 A. I am sure we have. I don't have those measurements  
20 with me right now. I don't know.

21 Q. Do you have your notes with you?

22 A. No, sir.

23 Q. How far is the Angelica plant to Tardy's Furniture?  
24 What is the distance there?

25 A. Maybe a mile and a half to two miles.

26 Q. Okay, sir. And how far is Kelly's Stop and Go to Mr.  
27 Flowers' apartment?

28 A. Approximately a quarter of a mile.

29 Q. How much?

- 1           A.    Maybe a quarter of a mile, maybe a little longer.
- 2           Q.    Could be as much as three quarters?
- 3           A.    I wouldn't think it was quite that far. It could be.
- 4           Q.    How far is Kelly's Stop and Go to Tardy's Furniture?
- 5           A.    I would say probably half a mile maybe.
- 6           Q.    Half a mile. And I believe you said that the first
- 7 interview with Mr. Flowers, he agreed to let you take a gun
- 8 residue sample?
- 9           A.    Yes, sir. He did.
- 10          Q.    Are you an expert at taking gunshot residue samples?
- 11          A.    Well, I have taken some.
- 12          Q.    But are you considered to be an expert?
- 13          A.    I have had training.
- 14          Q.    Okay. But that was general training at the academy?
- 15          A.    Yes, sir; in a class.
- 16          Q.    Now you were aware that there was a footprint, a shoe
- 17 print in the store on the day of July the 16th, '96, were you
- 18 not?
- 19          A.    That's correct.
- 20          Q.    And I believe also, other than taking the shoes from
- 21 Mr. Flowers' feet, you went to his house and recovered shoes;
- 22 is that correct?
- 23          A.    Yes, sir. We did.
- 24          Q.    Did you recover all Mr. Flowers' shoes he had at his
- 25 house?
- 26          A.    We recovered all of the tennis shoes that he said
- 27 that he owned.
- 28          Q.    But you had determined at this point it was a tennis
- 29 type shoes, ball shoe that made the track in the store?



1           A.    That's what we, it appeared to be; yes, sir.

2           Q.    You have not recovered that shoe that made that print  
3 in that store, have you?

4           A.    No, sir.

5           Q.    You have not recovered the gun, have you?

6           A.    No, sir.

7           Q.    So the pair of tennis that have been introduced here  
8 was just a pair that was purchased by you?

9           A.    Sir?

10          Q.    The pair of tennis shoes introduced into evidence was  
11 a pair of Fila tennis shoes that was purchased by you?

12          A.    Not by me, no, sir.

13          Q.    Who purchased those shoes?

14          A.    Officer Miller.

15          Q.    All right, sir. Have you examined those shoes, or  
16 did Mr. Miller examine them?

17          A.    No, sir. He examined them. I did not.

18          Q.    Do you know how the gun was allegedly stolen was  
19 reported, if you know?

20          A.    Do I know how?

21          Q.    Who reported it and how it was reported.

22          A.    Yes, sir. Mr. Simpson left the plant and discovered  
23 that his car had been, the glove compartment of his car had  
24 been broken into, and he came back to the plant and notified a  
25 supervisor that worked in the plant, and she or either someone  
26 there in the office there at the plant notified the Winona  
27 Police Department.

28          Q.    All right, you are aware with dispatchers of police  
29 departments and how they patrol, are you not?

1 A. Yes.

2 Q. Are they required to make written reports?

3 A. Yes, sir. They are.

4 Q. So you are presuming this is what happened?

5 A. That's what I was told.

6 Q. But you don't know that to be the facts?

7 A. Well, I talked with the supervisor there at Angelica,  
8 and she related those facts to--

9 Q. --I'm not asking what she said--

10 BY MR. EVANS: --Your Honor, he asked him, and I  
11 would ask that he be allowed to finish his answer.

12 BY THE COURT: Okay, I will but y'all don't  
13 interrupt each other because Ms. Burchfield has to  
14 take this down. He is entitled to finish his answer,  
15 and you have asked him about hearsay statements, so  
16 you have opened the door on that.

17 All right, Mr. Matthews you can finish your  
18 answer if you had not completed it.

19 BY THE WITNESS:

20 A. I talked with the supervisor there at Angelica, and  
21 she related those facts to me.

22 Q. All right, sir. Did you go to the scene where the  
23 gun was allegedly stolen from?

24 A. Yes, sir. I did.

25 Q. And were there other people there in the general  
26 vicinity other than inside the factory?

27 A. Yes, sir. The factory was in operation that day.  
28 There were a lot of people there.

29 Q. Okay. Did you interview Emmitt Simpson, Doyle

1 Simpson's brother?

2 A. Yes, sir; we did.

3 Q. Did you interview Ray Weems?

4 A. Yes, sir. I believe we did.

5 Q. He was also there?

6 A. Yes, sir.

7 Q. He is some relation to Doyle, I believe; is that  
8 correct?

9 A. Who is that?

10 Q. Ray Weems. Do you know--

11 A. I don't know.

12 Q. Do you know if they are related?

13 A. I don't know.

14 Q. You don't know that. All right. But he was there at  
15 the scene?

16 A. I'm not positive that he was there at the scene.

17 Q. But you did interview him?

18 A. That name sounds familiar, but I can't say that I  
19 did.

20 Q. All right, sir. Getting to the place behind Doyle  
21 Simpson's mother's house, I believe you said you did go there?

22 A. Yes, sir; I did.

23 Q. Did it appear to be a common place where people  
24 target practiced back there?

25 A. Well, it was just a residence there at the house.  
26 They live kind of out in the country area, but it's a lot of  
27 houses around. It's kind of a community out through there on  
28 Poor House Road. It's just a residence.

29 Q. Well, it did appear from your observation that there

1 had been other target practicing going on there by various  
2 people?

3 A. I couldn't determine that.

4 Q. Did you recover more than one caliber hull at the  
5 scene, at the target area?

6 A. I believe we saw some .22 caliber hulls there.

7 Q. Did you recover other projectiles in that vicinity  
8 from the post or in the dirt or in any trees?

9 A. No, sir.

10 Q. You only recovered the one?

11 A. I recovered one and Mr. Thornburg recovered one.

12 Q. Okay. Did you observe the post where the other  
13 holes, where other projectiles had struck the post?

14 A. There were a couple of holes in the post. Yes, sir.

15 Q. Other than where you and Mr. Thornburg removed  
16 projectiles?

17 A. That's correct.

18 Q. Now when did you recover the projectile from the  
19 mattress in the Tardy Furniture store?

20 A. I believe it was August the 13th.

21 Q. Almost a month later?

22 A. Yes, sir.

23 Q. And you don't know how that projectile got there, do  
24 you?

25 A. Sir?

26 Q. I say you do not know how that projectile got there?

27 A. No, sir.

28 Q. And I believe Mr. Evans asked you was there any  
29 discrepancy about the times that Mr. Flowers told you on the

1 two different interviews. Now we are talking about a  
2 discrepancy of 15, 20 minutes?

3 A. I didn't understand your question. I'm sorry.

4 Q. You interviewed Mr. Flowers twice; is that correct?

5 A. Yes, sir.

6 Q. And you told Mr. Evans that there was some  
7 discrepancy in the time. If you would, if you would elaborate  
8 on that a little bit for me?

9 A. Okay, he told me that he had gone to his sister's  
10 house, sister's apartment that morning.

11 Q. All right, now this is which morning, sir?

12 A. The morning of the 16th.

13 Q. All right, sir. Go ahead.

14 A. He told me that he had gone to his sister's apartment  
15 that morning and had also gone to Kelly's Stop and Go, which is  
16 a convenience store.

17 Q. All right, what time did he tell you he went to his  
18 sister's house?

19 A. He told me he went there sometime after, sometime  
20 after 9 o'clock, around 9:30.

21 Q. All right, sir. Then when you interviewed him back  
22 on the 18th, what time did he say?

23 A. He said he went there after 11:00.

24 Q. To his sisters house?

25 A. Yes, sir, and to the convenience store.

26 Q. All right. You don't think you are confused on the  
27 issue, are you?

28 A. No, sir. I don't think I am.

29 Q. All right, was there any difference in the time frame

1 as to when he went to the store from the first interview to the  
2 second interview?

3 A. He stated that he went after he had gone to his  
4 sister's house. He went there first, and then he went to the  
5 store and bought some beer and chips.

6 Q. All right, was that consistent both times? He went  
7 to his sister's house first and then went to the store?

8 A. Yes, sir.

9 Q. So on July 16th he told you he went to his sister's  
10 house and then went to the store?

11 A. Correct.

12 Q. July 18th, he told you he went to sister's house and  
13 then went to the store?

14 A. Yes, sir.

15 Q. So that was consistent?

16 A. That part of it was; yes, sir.

17 BY MR. BILLY GILMORE: All right, sir. Court  
18 indulge me one moment.

19 (Defense Counsel confer.)

20 BY MR. BILLY GILMORE: No further questions.

21 BY THE COURT: Redirect?

22 BY MR. EVANS: Briefly, Your Honor.

23 REDIRECT EXAMINATION BY MR. EVANS:

24 Q. Officer Matthews, other than the .380's that were  
25 recovered from the post at Doyle's mother's house, was the only  
26 other caliber there .22?

27 A. Yes, sir.

28 Q. And the other holes that you did notice in the post,  
29 were they consistent with the .22?

1           A.    Yes, sir.  They were.

2           Q.    The morning or the evening that you first identified  
3 the Defendant, you were asked about what he was wearing.  Was  
4 he wearing glasses that day?

5           A.    No, sir.  He was not.

6           Q.    Was he wearing glasses any of the times you  
7 interviewed him?

8           A.    No, sir.  He was not.

9           Q.    And you were asked by Defense Counsel if you checked  
10 into Doyle Simpson's whereabouts.  Were you able to verify his  
11 alibi of where he was that morning?

12          A.    Yes, sir.  He was working at Angelica that morning.

13                   BY MR. EVANS:  No further questions.

14                   BY THE COURT:  Is he finally excused, or do you  
15 want him to stay?

16                   BY MR. EVANS:  Your Honor, we will need him to  
17 stay around.

18                   BY THE COURT:  All right.  Mr. Matthews, you  
19 need to go back to the witness room.

20                               WITNESS LEAVES COURTROOM.

21                   BY THE COURT:  Who do you have next?  Well,  
22 wait a minute.  We have been at it about an hour and  
23 a half.  Let's take a break for a few minutes.

24                               (MR. BILLY GILMORE APPROACHED THE BENCH AS THE  
25 JURY WAS LEAVING THE COURTROOM BUT WAS NOT  
26 IMMEDIATELY ON THE RECORD UNTIL THE REPORTER PICKED  
27 UP AS FOLLOWS:)

28                   BY MR. BILLY GILMORE:  Especially that time they  
29 responded with remarks, and I don't know what it was

1 saying, but I know there were some comments being  
2 spoken that were audible.

3 BY THE COURT: Okay, I will address--

4 BY THE COURT REPORTER: --Do I need to be on the  
5 record?

6 BY THE COURT: No. What I do will be on the  
7 record.

8 (ALL COUNSEL WERE THEN CALLED UP TO THE BENCH  
9 FOR THE FOLLOWING OUT OF THE PRESENCE OF THE JURY:)

10 BY THE COURT: How about getting Margie to do  
11 this for us, and it will save me having to address it  
12 in open court. There are some comments being made  
13 behind Defense attorneys when they are questioning  
14 folks, and I am going to put a plain clothes officer  
15 over there. Would you tell Margie to tell them that  
16 they can't--

17 BY MR. EVANS: --Sure.

18 BY THE COURT: That I said that they need to  
19 hold it down. How about that?

20 BY MR. EVANS: Yes, sir.

21 BY MR. BILLY GILMORE: That is fine.

22 (FOLLOWING A MORNING RECESS ON OCTOBER 15, 1997,  
23 TRIAL CONTINUED IN OPEN COURT AS FOLLOWS:)

24 BY THE COURT: Who will you have next, Mr.  
25 Evans?

26 BY MR. EVANS: Clemmie Fleming.

27 BY THE COURT: Ms. Fleming, have you been  
28 sworn?

29 BY THE WITNESS: (Ms. Fleming nods her head.)



1 BY THE COURT: Have a seat right here, please.

2 CLEMMIE FLEMING,

3 a black female being called to testify as a witness by the  
4 State of Mississippi, having first been duly sworn, testified  
5 as follows, to-wit:

6 BY THE COURT: State your name for the record.

7 BY THE WITNESS: Clemmie Fleming.

8 BY THE COURT: Okay, Ms. Fleming, you have got  
9 to talk loud enough for that lady back there by the  
10 door to hear you. Okay.

11 BY THE WITNESS: Clemmie Fleming.

12 BY THE COURT REPORTER: Spell your first name,  
13 please.

14 BY THE WITNESS: C L E M M I E.

15 BY THE COURT: All right, Mr. Evans.

16 BY MR. EVANS: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MR. EVANS:

18 Q. Ms. Fleming, where do you live?

19 A. 905 B Vernon.

20 BY THE COURT: Lean up to the microphone.

21 BY MR. EVANS:

22 Q. If you would, speak closer to the microphone so that  
23 everybody can hear you.

24 A. 905 B Vernon.

25 Q. And in what city is that located?

26 A. Winona.

27 Q. And where are you employed?

28 A. Tyler Holmes.

29 Q. And what position do you hold at Tyler Holmes

1 Hospital?

2 A. Housekeeper.

3 Q. All right. I want to direct your attention back to  
4 July 16th of 1996, the day of the murders at Tardy Furniture.  
5 Do you remember that day?

6 A. Yes, sir.

7 Q. Do you remember where you were at approximately 10  
8 o'clock in the morning that day?

9 A. Yes, sir.

10 Q. Would you tell the jury where you were?

11 A. Well, I was coming down to Tardy's to go pay on my  
12 furniture, and I didn't, and I kept on going.

13 Q. All right, you were going to Tardy's to pay on your  
14 furniture. If you would, speak a little louder. I want to  
15 make sure that I hear you and everyone else hears you. Why did  
16 you not stop at Tardy's to pay on the furniture bill?

17 A. Because I was pregnant at the time and I didn't feel  
18 like getting out.

19 Q. All right. How far along were you?

20 A. About five or six, I think six.

21 Q. About six months?

22 A. (Witness nods her head.)

23 Q. Now--

24 BY THE COURT: Excuse me just a minute. Are  
25 y'all having trouble hearing her?

26 BY SEVERAL JURORS: Yes, sir.

27 BY THE COURT: You are going to have to shut the  
28 door, Mr. McIntyre. Nobody else can come in until  
29 this witness gets through testifying. She talks low,

1                   and the jury has got to be able to hear her.

2       BY MR. EVANS:

3           Q.    Ms. Fleming, if you would, please speak as loud as  
4       you can so that everybody can hear you.

5                   BY THE COURT:   Wait just a minute.

6       BY MR. EVANS:

7           Q.    They have got to hear what you say.

8                   BY THE COURT:   Mr. McIntyre, just go out there  
9       and tell them they can't come in.

10                   (Pause while the door to the courtroom was  
11       shut.)

12                   BY THE COURT:   Okay.

13       BY MR. EVANS:

14           Q.    All right, which direction were you headed when you  
15       went by Tardy Furniture?

16                   BY MR. BILLY GILMORE:   I object to leading, Your  
17       Honor.

18                   BY MR. EVANS:   How is that leading?

19                   BY THE COURT:   Well, it's overruled.

20       BY MR. EVANS:

21           Q.    You may answer the question.

22           A.    It was like, you know, in front of the store, you  
23       know, on North Carrollton Avenue.

24           Q.    Okay. And when you didn't stop at Tardy Furniture,  
25       which direction did you go?

26           A.    South.

27           Q.    All right, on what street?

28           A.    On Church Street.

29           Q.    When you turned on Church Street there at Tardy

1 Furniture, did you see anyone?

2 A. I seen Curtis.

3 Q. And who is Curtis?

4 A. Right there. (Witness points).

5 Q. You are pointing to the Defendant, Curtis Flowers?

6 A. (Witness nods her head.)

7 Q. How long had you known Curtis Flowers?

8 A. All my life.

9 Q. And you know who he is when you see him?

10 A. Yeah.

11 Q. When you turned the corner about 10 o'clock on the  
12 day of the killings at Tardy Furniture and saw Curtis Flowers,  
13 what was he doing?

14 A. Running.

15 Q. Now running; are we talking about jogging, or are we  
16 talking about running wide open? What are we talking about?

17 A. He was running.

18 Q. Wide open?

19 A. Uh-hum.

20 Q. Was he running toward the store or away from the  
21 store?

22 A. Away from the store.

23 Q. Was this as soon as you turned the corner in front  
24 of Tardy Furniture that you saw him running away from the  
25 store?

26 A. It was after we went up some more.

27 Q. All right, about how far from the corner of Tardy  
28 Furniture was he when you first saw him running away from the  
29 direction of the store?

1 A. 92 steps.

2 Q. Did you get out and step it out later?

3 A. Yes.

4 Q. Did I ask you to go back and be able to tell a jury,  
5 or did someone ask you to be able to tell a jury how far away  
6 it was?

7 A. No.

8 Q. You just went back on your own so that you would know  
9 how far it was?

10 A. Me and John, we went down there, and he asked me if I  
11 will go, you know, if I will, you know, if I could make the  
12 steps and I made them.

13 Q. All right. That is John Johnson, my investigator?

14 A. Yes, sir.

15 Q. And are we talking about your steps?

16 A. Yes, sir.

17 Q. And you stepped how many steps from--

18 A. 92.

19 Q. So 92 steps of your steps from the store is where you  
20 first saw Curtis Flowers that day?

21 A. Yes, sir.

22 Q. And he was running wide open running away from Tardy  
23 Furniture?

24 A. Yes, sir.

25 Q. Now you say you have known him all your life. Are  
26 you literally talking about all your life or just part of it?

27 A. Just part of it. You know, he stay, like his mama  
28 stay down the street like, you know, from my mama's house.

29 Q. Can you tell the jury approximately how many years

1 you have known Curtis Flowers?

2 A. Every since I was old enough to know.

3 Q. Is there any doubt in your mind that the person you  
4 saw running away from Tardy Furniture about 10 o'clock on the  
5 day of the killings was Curtis Flowers?

6 A. I know him.

7 Q. Who was with you when you were driving down the  
8 street?

9 A. Roy was driving.

10 Q. Is that Roy Harris?

11 A. Yes, sir.

12 Q. Do you have any transportation?

13 A. No, sir.

14 Q. And does Roy drive people around sometimes?

15 A. All the time.

16 Q. Can you describe Roy Harris for the jury?

17 A. He real dark and he work on cars and he be dirty all  
18 time.

19 Q. All right, what I'm getting at, as far as-- is he  
20 real hard of hearing?

21 A. Yes, sir.

22 Q. Did you and him-- now I can't ask you what the  
23 conversation was, but did you and him have any conversation  
24 about Curtis Flowers while you were driving by?

25 A. He was looking in the mirror like he was going to  
26 pick him up.

27 Q. And did you say anything to Roy Harris about whether  
28 or not you wanted him to pick Curtis Flowers up?

29 A. I told him to go on.

1 Q. You told him to go on.

2 Q. Yeah, it wasn't nobody but Curtis.

3 Q. And you didn't want him picking Curtis up?

4 A. Why? I paid him for a trip.

5 Q. All right. Describe to the jury where Curtis was  
6 running when you first saw him?

7 A. He was, he was running from the store.

8 Q. All right, was he on the street, on the side of the  
9 street?

10 A. Well, like on the side like on, you know, like on the  
11 side of the walkway.

12 Q. Okay. Did he stay on the walkway, or did he ever get  
13 off of the walkway?

14 A. He got off.

15 Q. And describe to the jury when he got off the walkway  
16 what he did then?

17 A. He just kept running.

18 Q. All right, was he still -- at that point because the  
19 jury doesn't know, at that point was he still going down the  
20 street, or was he going anywhere else?

21 A. He was-- well, I seen him again.

22 Q. No, when you first saw him, did he ever cut across  
23 any lots?

24 A. Yes, sir.

25 Q. Describe that to the jury so they will know what you  
26 are talking about.

27 A. Well, it was this old pink house on the corner, and  
28 they were tearing it down, and that's the lawn he was going  
29 across.

1 Q. All right. Is there a real large oak tree on that  
2 lot?

3 A. Yes, sir.

4 Q. Did you ever see Curtis Flowers close to that big oak  
5 tree?

6 A. Yeah.

7 Q. And what was he doing there?

8 A. That's when I scene him running.

9 Q. Is that where he cut across the lot?

10 A. Yes, sir.

11 Q. Which direction did you go from there?

12 A. I went up Church Street.

13 Q. And after you went up Church Street, where did you  
14 go?

15 A. Down Powell Street.

16 Q. All right, and from Powell Street, where did you go?

17 A. I went up the highway to Jeff's store.

18 Q. Highway 51?

19 A. Yes, sir.

20 Q. So you went on down south and then came back up north  
21 on 51; is that right?

22 A. Yes, sir.

23 Q. When you were coming back up 51, did you ever see the  
24 Defendant again?

25 A. I seen him coming like he was coming towards the  
26 store.

27 Q. And where was he coming from at that point?

28 A. I guess from downtown.

29 Q. All right, was he coming from the town direction



1 still?

2 A. Yes, sir.

3 Q. And did you ever see him cross 51?

4 A. Yes, sir.

5 Q. And was he headed back toward his house at that time?

6 A. He was coming, he was going towards the store, so I  
7 don't know if he was going home or to the store.

8 Q. All right, and the store is on the same side of 51  
9 that he lives on; is that right?

10 A. Yes, sir.

11 Q. And Ms. Fleming, is there any doubt in your mind that  
12 this man sitting right over here at the table is the person you  
13 saw running from Tardy Furniture on the morning of the  
14 killings?

15 A. I know him.

16 BY MR. EVANS: I tender the witness.

17 CROSS-EXAMINATION BY MR. BILLY GILMORE:

18 Q. Ms. Fleming, what time did you leave the house that  
19 morning?

20 A. It was almost 10 o'clock.

21 Q. Okay, did Mr. Harris come to your house and pick you  
22 up, or did you have to go over to his house?

23 A. I have to go to his house.

24 Q. Okay, he lives close to you?

25 A. Across the street.

26 Q. Now if you would, tell me exactly the direction you  
27 drove when you left your house. What street did you go down?

28 A. I went down Front Street.

29 Q. Well, now when you left your house, what street is up

1 there?

2 A. Oh. You have to go like, leaving The Project? You  
3 go down Vernon Street.

4 Q. Go down which street?

5 A. You go down Vernon.

6 Q. Vernon Street. All right, and what is the next  
7 street?

8 A. Then it's, you leave, you go like-- I don't know. I  
9 think it's Jackson Street.

10 Q. Okay, you have to turn off on Jackson Street. Where  
11 do you go next?

12 A. Then you be like where the railroad track at, and you  
13 have got to cross the track, and you be downtown.

14 Q. Okay, do you know about how far it is from your house  
15 to downtown area?

16 A. No.

17 Q. Is it a good long ways?

18 A. It ain't that far.

19 Q. All right, is it as much as a mile or better?

20 A. Yes, sir.

21 Q. All right, you got Mr. Harris to carry you uptown, I  
22 believe you said to pay a furniture note?

23 A. Yes, sir.

24 Q. And that was at Tardy's Furniture?

25 A. Yes, sir.

26 Q. But you didn't, didn't pay a note?

27 A. No, sir.

28 Q. Okay, at the time do you know how much you owed  
29 Tardy's Furniture for your furniture?

1 A. No, sir. I was behind--

2 Q. --Do you know approximately -- beg your pardon?

3 A. I was behind.

4 Q. Do you know approximately how much you owed?

5 BY MR. EVANS: Your Honor, unless he can show  
6 some relevance in how much her bill was, I would have  
7 to object to that.

8 BY THE COURT: How is that relevant, Mr.  
9 Gilmore?

10 BY MR. BILLY GILMORE: Your Honor, I will move  
11 on.

12 BY MR. BILLY GILMORE:

13 Q. Mr.-- I mean Ms. Fleming, have you made any other  
14 payments on that furniture since July the 16th, 1997?

15 A. Yes, sir.

16 Q. How many payments?

17 BY MR. EVANS: Your Honor, again I object on  
18 relevance.

19 BY THE COURT: Sustained.

20 BY MR. BILLY GILMORE:

21 A. I paid a hundred dollars--

22 BY THE COURT: --You don't have to answer that,  
23 ma'am.

24 BY THE WITNESS: Okay.

25 BY MR. BILLY GILMORE:

26 Q. I presume you still owe Tardy Furniture--

27 BY MR. EVANS: --Your Honor, I believe--

28 BY THE WITNESS: --Yes, sir--

29 BY MR. EVANS: --the Court has already ruled on

1                   this twice--

2                   **BY THE COURT:** --Mr. Gilmore, I have asked you  
3                   to explain how you could make that relevant, and you  
4                   have declined to do that, so don't pursue this line  
5                   of questioning. Move on.

6 **BY MR. BILLY GILMORE:**

7                   Q. Had you gone uptown and gotten Mr. Harris to carry  
8                   you uptown before?

9                   A. Yes, sir.

10                  Q. On a number of occasions?

11                  A. All the time.

12                  Q. Okay. And on specific occasions had Mr. Harris  
13                  carried you up there to make furniture notes?

14                  A. Yes, sir.

15                  Q. Now how do you focus on this particular day compared  
16                  to other days that Mr. Harris carried you up there?

17                  A. Because that was the day the folks got killed.

18                  Q. Okay, so you look back at that?

19                  A. (Witness nods her head.)

20                  Q. Okay, how was, how was Curtis Flowers dressed that  
21                  day?

22                  A. I just know him when I see him and, you know, he  
23                  don't interest me, and I just looked at his face, and I knew it  
24                  was him.

25                  Q. So you don't know how he was dressed?

26                  A. Uh-uh.

27                  Q. Now are you sure you went past Tardy Furniture store  
28                  that morning?

29                  A. Yes, sir.

1 Q. Ms. Fleming, isn't it true that you turned up on  
2 Summit Street before you got to Tardy's and went to Summit  
3 Street and then down Church Street behind Tardy's Furniture?

4 A. No, sir.

5 Q. You are you absolutely sure?

6 A. I am sure.

7 Q. Now Mr. Harris was driving?

8 A. Yes, sir.

9 Q. Were you telling him where to go?

10 A. I could point, you know, I could point and tell him  
11 because he can't hear me.

12 Q. He is hard of hearing?

13 A. (Witness nods her head.)

14 Q. Did he carry you uptown any other time within say a  
15 week's time of this particular time you are talking about?

16 A. No, sir.

17 Q. A week before or a week after?

18 A. No, sir.

19 Q. Okay. And you said you did not turn on Summit Street  
20 and on to Church Street?

21 A. No, sir.

22 Q. But you did not stop at Tardy's Furniture?

23 A. No, sir.

24 Q. And you said you saw Curtis Flowers running around a  
25 big tree at a pink house?

26 A. He was running, he wasn't running around no tree. He  
27 was running beside the tree.

28 Q. Beside the tree, okay. And did he cross the street  
29 while you were looking?

1           A.   Well, I couldn't tell if he crossed the street or  
2 not.

3           Q.   You didn't see him cross the street?

4           A.   No, sir.

5           Q.   Now you said something about Mr. Harris looked in  
6 his mirror, and you told him to go on, not to stop and pick him  
7 up?

8           A.   Yes, sir.

9           Q.   Do you know what the weather was on July the 16th at  
10 10 o'clock in the morning?

11          A.   It was hot.

12          Q.   It was real hot? Typical July day, wasn't it?

13          A.   (Witness nods her head.)

14          Q.   All right, you saw Curtis Flowers again over on 51  
15 around Fred's. I mean--

16          A.   At Jeff's store.

17          Q.   Jeff's store, okay. You don't remember what he had  
18 on over there?

19          A.   I just seen his face.

20          Q.   Okay. Was he there when you got there?

21          A.   No, sir.

22          Q.   Are you related to Curtis Flowers any kind of way?

23          A.   No, sir.

24          Q.   I believe you said you lived in the vicinity of where  
25 his mother lived at one time?

26          A.   Yes, sir.

27          Q.   Ms. Fleming, have you been offered a reward?

28          A.   No, sir.

29          Q.   Are you aware there is a reward been offered?

1 A. I didn't know.

2 Q. Do you know now?

3 A. Yeah, I know now.

4 Q. Have you been told that you might receive some  
5 reward?

6 A. No, sir.

7 BY MR. BILLY GILMORE: Court indulge me.

8 (Defense Counsel confer briefly.)

9 BY MR. BILLY GILMORE: Tender the witness, Your  
10 Honor.

11 REDIRECT EXAMINATION BY MR. EVANS:

12 Q. Ms. Fleming, you remember when you gave a statement  
13 about what happened to John Johnson, my investigator?

14 A. Sir?

15 Q. Do you remember giving a statement to John Johnson,  
16 my investigator?

17 A. Yes, sir.

18 Q. And you told him exactly the same thing you have told  
19 this jury today, didn't you?

20 A. Yes, sir.

21 Q. Including the fact that you went down in front of  
22 Tardy's Furniture?

23 A. Yes, sir.

24 Q. Is everything you have told this jury the truth?

25 A. Yes, sir.

26 Q. Have you got any reason to lie on Curtis Flowers?

27 A. No, sir.

28 Q. Is Curtis Flowers the person that was running from  
29 Tardy Furniture at 10 o'clock the day of the murders?

1 A. Yes, sir,

2 Q. Do you have any problem remembering the day those  
3 four people were killed?

4 A. No, sir.

5 BY MR. EVANS: No further questions, Your  
6 Honor. We would ask that this witness be excused.

7 BY THE COURT: Finally excused?

8 BY MR. EVANS: Yes, sir.

9 BY THE COURT: All right, Ms. Fleming you are  
10 free to go.

11 WITNESS EXCUSED.

12 BY THE COURT: Okay, who will you have next?

13 BY MR. HORAN: The State calls Patricia  
14 Hollman.

15 BY THE COURT: Mr. McIntyre, you can tell those  
16 that did not get in that they can come in now if they  
17 want in.

18 PATRICIA ANN HOLLMAN,  
19 a black female having been called to testify as a witness by  
20 the State of Mississippi, having first been duly sworn,  
21 testified as follows, to-wit:

22 BY THE COURT: Have a seat right there. State  
23 your name for the record, please, ma'am.

24 BY THE WITNESS: My name is Patricia Ann  
25 Hollman.

26 BY THE COURT: Okay. Ms. Hollman, the little  
27 microphone is the one that amplifies. That will be  
28 the one that you need to speak into.

29 BY THE WITNESS: Okay.



1 BY MR. HORAN: May I proceed, Your Honor?

2 BY THE COURT: Yes.

3 DIRECT EXAMINATION BY MR. HORAN:

4 Q. Ms. Hollman, where do you live now?

5 A. I live at 702 A McNutt Drive.

6 Q. Okay, and that, in Winona, Mississippi?

7 A. Yes, it is.

8 Q. How long have you lived at that residence?

9 A. Every since April.

10 Q. Where did you live prior to that?

11 A. 700 B McNutt Drive, Winona, Mississippi.

12 Q. Who lived in the house, or it's an apartment complex,  
13 is it not? Is it an apartment that you live in, duplexes? Are  
14 they duplex units?

15 A. Uh-hum.

16 Q. Who lived in that unit before you lived there?

17 A. Connie Moore.

18 Q. Okay, on July the 16th, 1996, did Ms. Moore live  
19 there?

20 A. Yes, she did.

21 Q. And on or about that time, that day was Curtis  
22 Flowers staying with her?

23 A. Yes.

24 Q. Do you know her children that live there with her?

25 A. Yes, I do.

26 Q. And who are they, her children that stay there at  
27 that particular apartment complex, or stayed there at that  
28 time?

29 A. Lemarcus Moore and Brittany Moore.

1 Q. How old is Lemarcus?

2 A. I don't really--

3 Q. --under ten? At that time was he under ten?

4 A. Yes.

5 Q. And you stated somebody else; who was that?

6 Brittany?

7 A. Her daughter, uh-hum.

8 Q. How old is she approximately? I know you may not  
9 know exactly.

10 A. One. She could have been one, one and a half by  
11 then, two.

12 Q. At that time?

13 A. Uh-hum.

14 Q. Now your residence that you live in on or about July  
15 the 16th, 1996, where is that in relationship to where you live  
16 now, the residence that was Connie Moore's?

17 A. It is within ten to twenty feets where I was living  
18 in the house and the house from we are living now.

19 Q. Okay, do y'all's front doors meet or back doors meet,  
20 or how does that work?

21 A. No, neither one. My back door is conjunction to her  
22 living room window and the side of her house going east, going  
23 back toward the, her back door.

24 Q. Okay. On or about that time did you have any  
25 relationship with Ms. Moore as far as friendship? Were y'all  
26 friends at that time?

27 A. Yes.

28 Q. Did you have any relationship to any of her children?

29 A. Yes, I knew them all. They knew me on an every day

1 basis.

2 Q. Were you the godmother to one of her children?

3 A. Yes, the little baby.

4 Q. I want to direct your attention to July the 16th,  
5 1996. Did you see Curtis Flowers on that particular morning?

6 A. Yes.

7 Q. This is the day that the killings occurred at the  
8 Tardy Furniture store?

9 A. Yes.

10 Q. When was the first time approximately that you saw  
11 him that morning?

12 A. Well, as always, I go for a morning walk. And that  
13 morning I was walking, and I seen him. He was sitting on the  
14 porch as always. He was sitting on the porch, and I was  
15 walking and I waved, but he like he was dazed out. He didn't  
16 wave back, and ordinarily, he always waves and speaks to me.  
17 And at that particular time he didn't speak or he didn't wave.

18 Q. Approximately what time was this?

19 A. Well.

20 Q. You say this is when you were walking in the  
21 morning?

22 A. Uh-hum.

23 Q. Okay. Did you-- what happened after that--

24 A. --It could have been--

25 Q. Go ahead. It could have been what time?

26 A. About 15 minutes to 5:00 or 10 minutes to 5:00; I'm  
27 not exact, just approximately what time.

28 Q. Okay, had no reason to keep up with the time at that  
29 point?

1 A. No.

2 Q. What happened after you saw Mr. Flowers?

3 A. Well, I went on in the house, and it was about, like  
4 I say, I said in my statement it was about 7:30, but it could  
5 have been earlier. It could have been a lots earlier. I seen  
6 him again when he came in the house. He went through the back,  
7 back door and--

8 Q. Could you describe his demeanor at that time?

9 A. Sir? Would you say that again?

10 Q. Could you describe his demeanor? Was he walking,  
11 running or what?

12 A. No, he was walking in a fast pace.

13 Q. All right. Go ahead.

14 A. And he went in the house through the back door, come  
15 from over the hill as always, and he went in. He didn't stay  
16 there long. He didn't even stay-- well, when I gave my  
17 statement, I said it was approximately--

18 Q. --Well, just tell me what you recall.

19 A. Okay. He was in a rage. You know, I could tell when  
20 he--I didn't-- when I was-- I didn't even get a chance to wave,  
21 you know, because he was in a quick, in a hurry, and I ain't  
22 speak because I speak and wave at him all the time, and I  
23 wasn't, I didn't even get a chance to speak or wave at him that  
24 particular morning.

25 Q. Okay, and you say he was leaving the apartment?

26 A. No, he was-- no, I didn't.

27 Q. Okay.

28 A. He was coming in.

29 Q. Okay.

1           A.    And then I seen him when he left also. He went back  
2 over here, but after he left, went in the house and came out.  
3 I don't know what direction he went in, but he was leaving.

4           Q.    All right, you say he went over the hill. Describe  
5 what you mean by that. These people probably have never been  
6 to the area.

7           A.    Well, where we live at, in the apartments where we--  
8 in the apartment complex where we live, it's a hill behind the  
9 apartments. That's where everybody take a short cut and come  
10 over the hill, and it is just a straight shot. You just can go  
11 over it, but when you get over the hill at a certain point, you  
12 can either go left or right, but you can't keep straight.

13          Q.    Okay, left or right would be north or south?

14          A.    Uh-uh, east or west.

15          Q.    East or west, I mean. Okay. All right, did this  
16 hill that you are talking about, is that east or west, north or  
17 south of y'all's two apartments? Do you know?

18          A.    Is it what now?

19          Q.    What direction from where your apartment is would  
20 this hill that you are talking about be? Is it just a hill  
21 with a road? Are you talking about the road or a hill? In  
22 relationship to your apartment, where is it?

23          A.    It is just right behind. I will say you are going  
24 south behind there.

25          Q.    And these apartment complexes that y'all live in, are  
26 they north of Angelica?

27          A.    Yes.

28          Q.    Do you recall what he had on when he left that  
29 morning?

1 A. Yes.

2 Q. Would you tell the Court and the jury what he had on?

3 A. Yes. He had on some black sweat pants that are nylon  
4 and zip up on the leg, and he had on some Filas.

5 Q. Filas?

6 A. Grant Hill tennis shoes.

7 Q. Grant Hill tennis shoes?

8 A. Yeah. And a white shirt with writing on the front.

9 Q. Okay. Ms. Hollman, tell me how are you familiar with  
10 the fact that Mr. Flowers had on Fila Grant Hill tennis shoes  
11 that morning?

12 A. Because I have two boys, ages 11 and age 9, and  
13 they-- I bought them a pair. They wear Filas. They wear Grant  
14 Hill tennis shoes.

15 Q. Okay, and you are familiar with them?

16 A. Yes.

17 Q. Had you ever seen him wearing those Grant Hill tennis  
18 shoes or seen him wearing Fila Grant Hill tennis shoes prior to  
19 that day?

20 A. Yeah, about two or three times a week, sometimes two  
21 or three times. I have seen him wearing them before then.

22 Q. Did you ever see any of the smaller children or  
23 anyone else that lived at that particular residence wearing  
24 Grant Hill tennis shoes?

25 A. No, I did not.

26 Q. Did you ever see the Defendant, Curtis Flowers, again  
27 on that date, on the 16th? Did you see Mr. Flowers after you  
28 saw him at 7:30?

29 A. Yes.

1 Q. What--

2 A. --a little bit before dinner time.

3 Q. Okay.

4 A. Approximately 11:45 or somewhere in that range  
5 because I come back to, so I could fix lunch. And he was  
6 wearing the same thing that he had on when I seen him leave  
7 that morning.

8 Q. Did he have the Fila Grant Hill tennis shoes on?

9 A. Yes.

10 Q. Now Ms. Hollman, would you describe whether or not he  
11 laced these Grant Hill tennis shoes like most other people  
12 laced them?

13 A. No, he do not.

14 Q. Okay.

15 A. Do you want me to continue?

16 Q. Sure.

17 A. He laced his different.

18 Q. All right. Tell us--

19 A. --It's a different way you can lace like going in  
20 from the side. You can lace it in front and go in from the  
21 side.

22 Q. Okay, and how did he lace his?

23 A. Like going in from the side.

24 Q. From the side; not across--

25 A. --and let the strings just hang down -- no.

26 Q. Did you hear a conversation between the Defendant,  
27 Curtis Flowers, and Connie Moore on Saturday prior to the  
28 murders having taken place on the following Tuesday?

29 BY MR. BILLY GILMORE: Your Honor, I'm going to

1 object as being irrelevant and immaterial; no  
2 predicate lain.

3 BY THE COURT: Well, I don't know whether it is  
4 or not at this time. I will have to hear what the  
5 statement is. Overruled.

6 BY MR. HORAN:

7 Q. Did you hear a statement between the Defendant and  
8 Connie Moore on the Saturday prior to the Tuesday when the  
9 murders took place?

10 A. Yes. They had a strong argument.

11 Q. And what was the substance of that argument?

12 A. Well, they was arguing about, going into everything  
13 they were saying?

14 Q. Right.

15 A. Can you say it?

16 Q. I mean what-- yes. What were they arguing about  
17 first, and then you can tell me what the substance of it was.  
18 What were they arguing about?

19 A. Okay. Evidently it was about work. It was about  
20 work.

21 BY MR. BILLY GILMORE: Your Honor, I'm going to  
22 object unless she knows.

23 BY MR. HORAN:

24 Q. Is that based on what you heard?

25 A. Yes, as me hearing and what he was saying after he--  
26 when they was arguing and what he was saying, it was about  
27 work.

28 Q. Okay, and what did he say--

29 BY MR. BILLY GILMORE: --Your Honor, I'm going



1 to again renew my objection. That is conclusion on  
2 her part, an opinion.

3 BY MR. HORAN: It's based after what she heard,  
4 Your Honor.

5 BY THE COURT: Well, she is entitled to make a  
6 lay opinion if she has some basis for it. You  
7 probably need to lay a predicate by letting her say  
8 what he said, and then let's see if she formed an  
9 opinion from that.

10 BY MR. HORAN: Right.

11 BY MR. HORAN:

12 Q. What did you hear the Defendant say to Connie Moore  
13 at that time?

14 A. Yes. And while they was arguing, I heard him say,  
15 "Fuck them. Fuck everybody down there. Just fuck everybody.  
16 I don't-- just fuck everybody down there."

17 Q. And based on that statement and what you heard them  
18 talk about earlier, is it your opinion that he was making  
19 reference to his work?

20 A. Yes.

21 BY MR. BILLY GILMORE: I object then, Your  
22 Honor.

23 BY MR. HORAN: I think she can make that  
24 opinion, Your Honor, based--

25 BY MR. BILLY GILMORE: --I don't see how--

26 BY THE COURT: --well, I sustain it as to  
27 leading.

28 BY MR. HORAN: Yes.

29 BY MR. HORAN:

1 Q. Did you form an opinion as to what they were talking  
2 about?

3 A. Yes.

4 Q. What was that?

5 BY MR. BILLY GILMORE: I object, Your Honor.

6 BY THE COURT: She has got to go further in your  
7 predicate. You have got to lay a better predicate  
8 than that.

9 BY MR. HORAN:

10 Q. Did you hear other conversation between the Defendant  
11 and Connie Moore?

12 A. Yes.

13 Q. And what was the substance of that particular  
14 conversation?

15 A. She was--

16 BY MR. BILLY GILMORE: --Object to hearsay.

17 BY MR. HORAN: Your Honor, she can only do  
18 this-- that is the only way she can form her opinion.

19 He is present, and it's a statement made--

20 BY THE COURT: --It is not hearsay. Go ahead.

21 BY THE WITNESS:

22 A. She had recently told me that the reason why I formed  
23 this--

24 BY MR. BILLY GILMORE: --Object--

25 BY THE COURT: --That is. Sustained.

26 BY MR. HORAN:

27 Q. That is. I'm talking about the conversation on that  
28 Saturday between those two.

29 A. Okay. About them arguing?

1 Q. Right.

2 A. Yes, they was arguing.

3 Q. Okay. Did you hear her say anything to him about  
4 work on that particular day?

5 A. No.

6 Q. Okay.

7 BY THE COURT: Okay, then the objection is  
8 sustained.

9 BY MR. HORAN: Your Honor, you may want to get  
10 the jury to disregard the testimony regarding--

11 BY THE COURT: --Yeah, you are to disregard that  
12 testimony. I have ruled that that was not  
13 admissible, and so you are to disregard that, that  
14 portion of her testimony.

15 BY MR. HORAN:

16 Q. Ms. Hollman, did you have some type of independent  
17 conversation with Ms. Moore that led you to draw the  
18 conclusion?

19 BY MR. HORAN: I'm not going into the substance  
20 of it, Your Honor.

21 BY MR. BILLY GILMORE: Your Honor--

22 BY MR. HORAN: --as to what they were talking  
23 about.

24 BY MR. BILLY GILMORE: I think he is trying to  
25 get through the back door what he couldn't get  
26 through the front door. I object.

27 BY THE COURT: For me to be able to rule on  
28 that, I have got to know what was said, so the  
29 substance of it is not going to get it.

1 BY MR. HORAN: Can't fault me for trying, Your  
2 Honor.

3 BY THE COURT: No, sir. I can't.

4 BY MR. HORAN:

5 Q. Now it is my understanding that you have seen the  
6 Defendant, Curtis Flowers, at that residence. He was living  
7 there at the time; is that right?

8 A. Yes.

9 Q. Do you see Curtis Flowers in the courtroom today?

10 A. Yes.

11 Q. Would you point to him, please?

12 A. (Witness points).

13 BY MR. HORAN: I tender the witness.

14 BY THE COURT: Let the record reflect that she  
15 pointed to the Defendant.

16 BY MR. BILLY GILMORE: May I proceed, Your  
17 Honor?

18 BY THE COURT: Yes.

19 CROSS-EXAMINATION BY MR. BILLY GILMORE:

20 Q. Ms. Hollman?

21 A. Yes.

22 Q. I call your attention to the morning of July 16th,  
23 1996.

24 A. Yes.

25 Q. You are saying you saw Curtis Flowers go in his back  
26 door between 7:30 and 8:00 that morning?

27 A. No, I did not.

28 Q. What did you say?

29 A. I said I seen him, it could have been 7:00. It could

1 have been 7:30, but it was early. It could have been a little  
2 earlier, but in my statement I said 7:30, but it could have  
3 been earlier.

4 Q. Well, I believe you gave the investigator a statement  
5 back on August the 7th of '96, and you said it was 7:30?

6 A. Yes.

7 Q. Well, what is it?

8 A. It could have been earlier than 7:30. At that time I  
9 was just giving appropriate time. It could have been earlier  
10 than 7:30, but I know it wasn't 7:30 to 8 o'clock. It wasn't  
11 8:00. I do know that.

12 Q. Do you remember talking to me last week?

13 A. Yes, I do.

14 Q. Do you remember telling me it was between 7:30 and  
15 8:00?

16 A. No, I do not.

17 Q. You don't know remember saying that?

18 A. No, I do not. And at that time when you visit me, I  
19 was, I had came from the doctor anyway, so I kept telling you  
20 that what I done told the DA, the statement was in the DA, but  
21 you kept on pressing me and pressing me asking me, just give me  
22 appropriate what time. You didn't ask me for a specific time.

23 Q. But you did say 7:30 to 8:00?

24 A. No, I did not.

25 Q. But you deny you told the investigator on August 7th  
26 of '96, it was 7:30?

27 A. I didn't deny it. I did tell them it was 7:30 A M.  
28 But it could have been earlier than that because they were just  
29 asking for an appropriate time, just giving my statement back

1 then. But it could have been earlier.

2 Q. Okay. Now he was coming from over the hill going to  
3 the back of his house; is that correct?

4 A. That's right.

5 Q. At the time you saw him, whenever it was?

6 A. Uh-huh.

7 Q. Now I believe these houses are duplex houses; is that  
8 right? Two apartments per house unit?

9 A. Yes, it is.

10 Q. And it's like in a square, and it's houses on the  
11 inside of the square and houses on the outside of the square?

12 A. No. It's not; it's a circle.

13 Q. Well, a circle.

14 A. Uh-hum.

15 Q. But it is houses inside the circle and houses on the  
16 outside of the circle?

17 A. Yes, it is.

18 Q. And all these are duplex houses?

19 A. Uh-hum.

20 Q. Now you are saying prior to moving to 702 A McNutt,  
21 you lived, I guess to the east of this apartment?

22 A. (No response).

23 Q. Would it be back toward the highway?

24 A. Yes, back toward the main street.

25 Q. Okay. All right, and when did you move to 702 A  
26 McNutt Street?

27 A. Do what now?

28 Q. When did you move to 702 A McNutt Street there in  
29 Winona?

- 1 A. When did I move there?
- 2 Q. Yes.
- 3 A. I moved there in April.
- 4 Q. April of this year?
- 5 A. Uh-huh.
- 6 Q. And you say that's the same apartment that Connie
- 7 Moore was living in at that time?
- 8 A. Yes, it was.
- 9 Q. And the same apartment you are referring to that you
- 10 saw Curtis Flowers go in?
- 11 A. Yes, it was.
- 12 Q. Okay. Now getting back to, you said you saw him come
- 13 over the hill and go in the back door of his apartment?
- 14 A. Yes.
- 15 Q. Somewhere around 7:30?
- 16 A. I said it could have been earlier.
- 17 Q. Well--
- 18 A. --It could have been earlier.
- 19 Q. Ms. Hollman, do you know what time it was?
- 20 A. Do I know?
- 21 Q. Yes.
- 22 A. I know it was in the 7 o'clock range. It could have
- 23 been earlier than 7:30, but as I say, when I was giving my
- 24 report, I gave an appropriate time. I gave that on my own
- 25 will, but it could have been earlier.
- 26 Q. All right. And how was he dressed again?
- 27 A. He had on some wind suit pants. They was nylon.
- 28 Q. And what color?
- 29 A. Black.

1 Q. Okay.

2 A. They zip up on the leg, and he had some white T-shirt  
3 with writing on the front, and he had on some white Grant  
4 Hills.

5 Q. And how far where y'all are parked?

6 A. It wasn't within ten feet because my house-- you can  
7 walk from my house to there, and it's not even, it's not really  
8 ten to twenty feet.

9 Q. Okay. So you could see what he had on without a  
10 doubt in your mind?

11 A. Yes. That's right.

12 Q. Okay. If somebody said--

13 BY MR. HORAN: --Your Honor, he is pitting  
14 witnesses now, one witness against the other. That  
15 is inadmissible.

16 BY THE COURT: You can't do that.

17 BY MR. BILLY GILMORE:

18 Q. All right, you said he came over the hill in a rage.  
19 What do you mean by a rage?

20 A. Well, by me knowing him in ordinary person, he was  
21 like, he was at a fast pace, and he wasn't in his ordinary  
22 self. By me knowing Curtis, I know him, and he was like  
23 something was bothering him or like he was angry or something  
24 because when he came over, he didn't even give me time to wave  
25 or speak as I said before. And he was just like something was  
26 bothering him. He went in the house, and he didn't stay long.

27 Q. How long did he stay?

28 A. It wasn't, it was way less than -- in my report I  
29 said thirty minutes. But it was way less than thirty minutes.



1 It was way less.

2 Q. Well, do you know when he came back out and left?

3 A. I seen him when he came back out.

4 Q. All right, do you know what time that was?

5 A. No, I do not. But I know it was less than thirty  
6 minutes. It was less.

7 Q. Was it twenty minutes?

8 A. No, it was less than that.

9 Q. Well, isn't it a fact didn't you tell the  
10 investigator back then it was twenty minutes?

11 A. Yes, I did.

12 Q. And now you are saying you don't know?

13 A. No, I did not say I didn't know.

14 Q. Well, would your memory be better back then a year  
15 ago or now?

16 A. Would it be better? Evidently, it would be better  
17 back then a year ago, but I still know about what I seen and  
18 about the time of what I seen.

19 Q. So if you told the investigator you saw him at 7:30  
20 back then, that would be your best recollection?

21 A. No, that's appropriately [sic]. That is not a specific  
22 time. That is appropriately [sic] what time I seen him.

23 Q. So if you told the investigator back then he stayed  
24 in there about twenty minutes and left again, that would be  
25 better back then than it is now?

26 A. No, it would not.

27 Q. Okay. Now did you see the children that morning?

28 A. Yes, I did.

29 Q. You named two of them. One of them was Lemarcus and

1 one of them was Brittany?

2 A. Oh, no, I did not. I didn't see her that morning.

3 Q. Okay, did you see Lemarcus?

4 A. Yes, I did.

5 Q. Where was Lemarcus? He was standing on the porch  
6 over the rail with another guy, with another little boy, but I  
7 don't know who it was.

8 Q. What time was this?

9 A. That was like, that was a little before dinner.

10 Q. Did you see the children, any of the children at the  
11 time you saw Curtis go in the back?

12 A. No, I did not.

13 Q. So you saw two children on the porch about when?

14 A. A little before dinner.

15 Q. Did you see Curtis then?

16 A. Yes.

17 Q. What was he doing?

18 A. What was he doing?

19 Q. Uh-hum.

20 A. Well, he was just, he wasn't doing anything. I  
21 didn't see him doing nothing.

22 Q. Was he standing, walking, running?

23 A. Standing.

24 Q. Standing. Where was he?

25 A. On the sidewalk.

26 Q. In front of the house, back of the house?

27 A. Front.

28 Q. Was he still dressed the same way you said?

29 A. I didn't say that.

1 Q. What did you say?

2 A. You didn't ask me how he was dressed then.

3 Q. Okay, how was he dressed then?

4 A. He still had the same sweat suit pants, nylon with  
5 the white shirt, and tennis shoes.

6 Q. All right. You say this is before lunch. Do you  
7 know about what time before lunch?

8 A. No, I really do not, but it could-- it was before  
9 dinner. I know before 12 o'clock.

10 Q. I believe you told me last week that you had a child  
11 that you had to feed at exactly 12:00?

12 A. That's right. She is--

13 Q. Was it before you fed this child?

14 A. Do what now?

15 Q. Was it before--

16 A. --Yes, it was. It was.

17 Q. How far back from this did you see Curtis?

18 A. How far back? Could you restate that?

19 Q. All right. You said you fed your child at 12:00.

20 Had you seen Curtis before you fed the child?

21 A. Yes, I did.

22 Q. All right, was it thirty minutes before or an hour  
23 before or--

24 A. --no, it was not.

25 Q. How far was it?

26 A. It was not. I seen him before I fed her.

27 Q. How far back?

28 A. It was about, I would say about 11-- about 15 minutes  
29 when I seen him, about 11:45. It could have been in that

1 range.

2 Q. About 11:45?

3 A. 15 minutes to 12:00 because we got back early. We  
4 got back a little, about 10 to 15 minutes before; we got back  
5 before dinner time because we went shopping, and we got back  
6 before dinner.

7 Q. What time did you leave that morning?

8 A. What time did I leave?

9 Q. Uh-huh.

10 A. I really don't, I can't say what time I left. I  
11 don't really know.

12 Q. How long were you gone?

13 A. How long was I gone?

14 Q. Uh-huh.

15 A. We was gone a pretty, we was gone-- in order for us  
16 to get back before dinner, I can't say that time either, how  
17 long we was gone because he was shopping, and we wasn't looking  
18 at no time.

19 Q. Well, I mean were you gone three or four hours?

20 A. Yeah, somewhere in that range.

21 Q. Okay, longer than that or less than that?

22 A. It could have been-- from three to four hours-- from  
23 two to three hours we was gone.

24 Q. Two to three hours?

25 A. Uh-hum.

26 BY MR. BILLY GILMORE: Court indulge me a  
27 moment.

28 (Defense Counsel confer briefly.)

29 BY MR. BILLY GILMORE:

1           Q.    Ms. Hollman, does Connie Moore have more than two  
2 children?

3           A.    Yes, she do.

4           Q.    And how many does she have?

5           A.    Four.

6           Q.    Four. And only two live there?

7           A.    Well, there was two there is my knowing, yes.

8           Q.    Does she have one child named Marcus Moore?

9           A.    I don't really know his name. I just know his  
10 nickname. But I know-- yes, she have a child named Lemarcus.  
11 I know most of their nicknames. I'm not familiar with their  
12 real names, but I know them when I see them.

13          Q.    Okay. Are the other two children that is not living  
14 there older than two that is living with her?

15          A.    Do what now? Say that again.

16          Q.    You said she has four children; right?

17          A.    Uh-hum.

18          Q.    All right, the two children that do not live with  
19 Connie Moore, are they older than the two that do live with  
20 Connie Moore?

21          A.    Okay. One of them is older than -- one of them is  
22 older, and one of them is-- the girl, she is younger than one  
23 of the boys that live, that Connie have possession of. The  
24 girl is younger than him, so I can't say that they are older; I  
25 can't say that they are younger because one is older and one is  
26 younger.

27          Q.    The two older children, are they boys or girls?

28          A.    Boys.

29          Q.    Both of them are boys?

1 A. Uh-hum.

2 Q. All right, so those two boys that do not live with  
3 Connie, are they older than the boy and girl that live with  
4 Connie?

5 A. The two boys that don't live-- no, that is not  
6 correct. It's not two boys that don't live with her. It's a  
7 boy and a girl that didn't live with her at that time, and a  
8 boy and girl that lived with her.

9 BY MR. EVANS: Your Honor, I hate to object, but  
10 unless he can show some relevance to how many kids  
11 she has got and where they live, I'm going to have to  
12 object.

13 BY THE COURT: I think I see the relevance to  
14 it. Go ahead.

15 BY MR. BILLY GILMORE:

16 Q. She has four children?

17 A. Uh-hum.

18 Q. All right, how many boys does she have?

19 A. Two.

20 Q. How many girls?

21 A. Two.

22 Q. Okay. Now we got that cleared up. There is a boy  
23 named Lemarcus that lives with Connie?

24 A. That's right.

25 Q. And there is a girl, Brittany, that lives with  
26 Connie?

27 A. Right.

28 Q. All right. Do you know Marcus?

29 A. Yes.

1 Q. All right, is he older than Lemarcus?

2 A. He older.

3 Q. Okay, and you said there is a girl. What is her  
4 name, other than Brittany?

5 A. Merissa.

6 Q. And is she older than Marcus?

7 A. No, she is younger.

8 Q. She is younger than Marcus--

9 A. --right--

10 Q. --but she is older than Brittany?

11 A. Yes.

12 Q. Okay. Now we have got that clarified. Now you said  
13 you saw two children over at that house that day?

14 A. Uh-hum.

15 Q. Was it boys, girls?

16 A. Two boys.

17 Q. Two boys. All right, was one of them Lemarcus?

18 A. Yes, it was.

19 Q. And do you know who the other one was?

20 A. No, I can't say because I, I just know-- it could  
21 have been her other son coming to visit. It could have been  
22 her other son because the description that I got, you know,  
23 when I looked at him, it could have been him. But I can't say  
24 for sure that it was him.

25 Q. The other child, was he bigger or older than  
26 Lemarcus?

27 A. Yes, he was bigger.

28 Q. But you didn't see a good enough look at him to tell  
29 who he was?

1 A. No.

2 Q. Okay. Did you see any vehicles coming or leaving the  
3 apartment that day?

4 A. Yes.

5 Q. When?

6 A. When I seen the vehicle was a little before 12:00,  
7 noon. I seen the gray vehicle, and then when I looked out  
8 again, the gray vehicle was gone. But I don't know who was  
9 driving or who, how it got, how it left or what. But I just  
10 know it was a gray car sitting out there on their side of the  
11 drive because we both use the same parking space.

12 Q. Okay. Isn't it true, Ms. Hollman, that each  
13 apartment has an indention off the street for parking for the  
14 people that live there?

15 A. Yes, uh-huh.

16 Q. And this is what you're talking about?

17 A. Uh-huh. Yes, it is.

18 Q. You don't know whose car it was?

19 A. No. Well, it could-- whose car was it? It could  
20 have been his mother or his sister, but I don't know which one  
21 it was. So no, I do not.

22 Q. Or it could have been somebody else's?

23 A. Yes, it could have been.

24 BY MR. BILLY GILMORE: No further questions.

25 REDIRECT EXAMINATION BY MR. HORAN:

26 Q. Ms. Hollman, do you remember when Mr. Johnson asked  
27 you about the time frame? You said you were walking that  
28 morning. Do you remember making a statement, it was about 7:30  
29 A.M. when I seen him running to the house? Do you remember



1 that?

2 A. Uh-hum, yes.

3 Q. And also when he asked you about how long he stayed  
4 in the there, you said it was about 20 minutes?

5 A. Uh-hum.

6 Q. Okay. And I want to clear something up. You saw him  
7 go in the house and leave the house both, I assume--

8 A. Right.

9 Q. --based on what you testified on direct--

10 A. --uh-hum--

11 Q. --and cross examination?

12 A. Yes, I did.

13 Q. And it was about that same time frame he went in the  
14 house, stayed ten minutes and left?

15 A. That's right.

16 BY MR. BILLY GILMORE: Your Honor, he just asked  
17 her about 20 minutes, and he says 10 minutes.

18 BY MR. HORAN: That's what she said in her  
19 statement--

20 BY THE COURT: --I think the jury has heard her  
21 answers, and I think she has completely answered  
22 them.

23 BY MR. HORAN: I am through with the witness,  
24 Your Honor.

25 BY THE COURT: They can decide it. You are  
26 finally excused; I assume that's right, isn't it?

27 BY MR. EVANS: I think so.

28 BY MR. HORAN: Uh, yeah, Your Honor. We are  
29 going to have to unfortunately-- we will get her back

1 up here, but she is going to have to stay under the  
2 State's subpoena.

3 BY THE COURT: You have got to stay then.

4 BY MR. HORAN: I have already discussed with her  
5 that situation.

6 BY THE COURT: Okay. You may return to the  
7 witness room.

8 BY THE WITNESS: I can leave and go back to  
9 Winona?

10 BY THE COURT: That is between you and Mr.  
11 Horan. Right now you have got to go back to the  
12 witness room. They can talk to you at lunch.

13 WITNESS LEAVES COURTROOM.

14 BY THE COURT: All right. Who will you have  
15 next?

16 BY MR. EVANS: Roxanne Ballard.

17 BY A MALE JUROR: Is it appropriate to ask you  
18 something about the witness? We were told to  
19 scratch that.

20 BY THE COURT: Well, not without--

21 (Juror hands the Court a note.)

22 BY THE COURT: Okay, y'all come here just a  
23 second.

24 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
25 THE JURY AS FOLLOWS:)

26 BY THE COURT: This is the question the jury  
27 wants me to clarify my ruling on what they are to  
28 disregard. I assume there is no objection to that?

29 BY MR. HORAN: It's not the statement of

1 testimony.

2 BY THE COURT: Huh?

3 BY MR. HORAN: Not everything she heard, just  
4 the statement regarding what she--

5 BY THE COURT: --I'm going to--

6 BY MR. HORAN: --the statement with Connie.

7 BY THE COURT: Well, her discussion about the  
8 opinions.

9 BY MR. EVANS: Just her opinion.

10 BY THE COURT: Just her opinion.

11 BY MR. BILLY GILMORE: What they were fussing  
12 about?

13 BY THE COURT: Huh?

14 BY MR. BILLY GILMORE: What they were fussing  
15 about?

16 BY MR. EVANS: No.

17 BY MR. HORAN: Not what was said, but what her  
18 opinion about what they were fussing about.

19 BY THE COURT: Her opinion about what they were  
20 fussing about is not admissible.

21 BY MR. BILLY GILMORE: And the rest of it?

22 BY THE COURT: They are to disregard it.

23 BY MR. HORAN: And the statements are not.

24 BY MR. EVANS: The rest of it was in his  
25 presence. That is not hearsay.

26 BY THE COURT: It's not hearsay. The question  
27 is whether or not it is relevant. It has some  
28 relevance, some probative value, so I'm going to  
29 allow it, but it's just the opinion that I'm not

1 going to allow, and I am going to explain that to  
2 them.

3 BY MR. HORAN: And the hearsay between her and  
4 Connie Moore.

5 BY THE COURT: Okay. I think that was later on,  
6 but I will do that too.

7 END BENCH CONFERENCE.

8 BY THE COURT: In relation to Ms. Hollman's  
9 statements that I said that you would disregard, what  
10 you are to disregard is that she was asked to give a  
11 lay opinion after she heard the statements, have an  
12 opinion of what they meant or anything like that. My  
13 instructions were that I would not allow her to make  
14 that opinion because she had nothing to make that --  
15 she did not have enough information to have a valid  
16 opinion at that point. That statement you must  
17 disregard. You also must disregard the statement  
18 that she had, any statement that she had from Connie  
19 Moore at a time other than that. I think it was a  
20 statement it was a previous day, and you can't  
21 regard that-- I mean you can't consider that; excuse  
22 me.

23 ROXANNE MILLER BALLARD,  
24 a white female being called to testify as a witness by the  
25 State of Mississippi, having first been duly sworn, testified  
26 as follows, to-wit:

27 BY THE COURT: State your name for the record,  
28 please, ma'am.

29 BY THE WITNESS: Roxanne Miller Ballard.

1     DIRECT EXAMINATION BY MR. EVANS:

2             Q.    Ms. Ballard, if you would, I need you to maybe pull  
3     that microphone just a little bit closer to you.  It is kind of  
4     hard to hear in here at times.  Where do you live?

5             A.    602 Westland Drive in Winona, Mississippi.

6             Q.    And did you know Bertha Tardy during her life?

7             A.    Yes.

8             Q.    Were you related to her?

9             A.    Yes.  She is my mother.

10            Q.    Okay.  Ms. Ballard, were you involved to some extent  
11     in the business there?

12            A.    Yes.

13            Q.    And were you familiar with how the business was run,  
14     who ran it, and who did different jobs?

15            A.    Yes.

16            Q.    Who owned Tardy Furniture?

17            A.    My mother.

18            Q.    And would you tell the jury just a little bit about  
19     the normal operating procedure.  What time did the store open,  
20     and what time did it normally close?

21            A.    It opened at 9:00 in the morning and closed 5 o'clock  
22     except Wednesday afternoon they closed at noon.

23            Q.    All right, and normal procedure, who opened in the  
24     morning?

25            A.    My mother.

26            Q.    What time would she open?

27            A.    Right at 9 o'clock.

28            Q.    Can you tell the jury her normal procedure of how she  
29     would open the business?

1           A.    She would go in, unlock the front door, turn on some  
2           lights on that side of the store, and go to her office and  
3           unlock the safe and take the things necessary for business, the  
4           cash drawer, and the accounts receivable book and the receipt  
5           book out and take it to the front office.

6           Q.    Was the cash drawer always kept in the safe at night?

7           A.    At night, yes.

8           Q.    And where would she put the cash drawer when she  
9           would open up in the mornings?

10          A.    Inside, there is a wooden drawer that pulls out in  
11          the office desk out front, and the whole thing just sits down  
12          in there.

13          Q.    How much money was normally kept in the safe at night  
14          to open up in the next morning?

15          A.    In the drawer, \$300.00.

16          Q.    Have you looked at a ledger that allows you to tell  
17          exactly how much money was in the cash drawer that morning?

18          A.    Uh-hum.

19          Q.    I want to hand you Exhibit 106 and ask you to look at  
20          this exhibit if you would?

21          A.    (Witness complies.)

22          Q.    Is that the ledger that was used to show how much  
23          money was in the cash drawer on July the 16th, 1996?

24          A.    Yes.

25          Q.    And from that ledger can you tell the jury how much  
26          money would have been in that drawer at that time?

27          A.    Yes. It would be, actually it would normally have  
28          been \$300.00, but on that day there was \$400.00 in there.

29          Q.    And would that include change also?

1 A. That was everything.

2 Q. What type of money bag did the store use?

3 A. A Sunburst Bank bag.

4 Q. And do you know whether there was any extra money  
5 that your mother may have had in the safe?

6 A. From time to time there is generally something in the  
7 safe.

8 Q. All right, did she have a separate money bag that she  
9 kept money in the safe sometimes?

10 A. Yes, sir.

11 Q. And what color was that money bag?

12 A. Green.

13 Q. And do you know from your personal knowledge, have  
14 you been back in and seen whether or not that green money bag  
15 was still in the safe after this happened or not?

16 A. I have not seen that bag.

17 Q. You have not seen it?

18 A. (Witness shakes her head.)

19 Q. And you have been through the safe and through the  
20 store, have you not?

21 A. Oh, yes.

22 Q. Who else was working at the store with your mother on  
23 July the 16th?

24 A. Carmen Rigby.

25 Q. All right, let's just take them one at a time. Who  
26 is Carmen Rigby?

27 A. She was the bookkeeper, assistant manager, sales  
28 person, credit manager; just about everything.

29 Q. She did a little of all the jobs?

1 A. (Witness nods her head.)

2 Q. And how long had she been working at Tardy Furniture?

3 A. 20 years.

4 Q. What was her normal morning procedure?

5 A. Well, Carmen generally got there after 9 o'clock,  
6 anywhere from 10 after to 9:30. And then when she came in,  
7 Mama had already opened up and gotten the money and the drawer  
8 and everything, and Carmen would come in and take the receipt  
9 book to see what had come in the day before and that morning in  
10 the mail and make up a deposit and count the drawer and balance  
11 the drawer and then go to the bank.

12 Q. Have you had a chance to look at the normal business  
13 records to see if a deposit was, in fact, made that morning?

14 A. Yes.

15 Q. And what bank was that deposit made at?

16 A. Union Planters.

17 Q. Who else, excuse me; who else was working at Tardy  
18 Furniture that morning?

19 A. BoBo Stewart and Robert Golden.

20 Q. Who is BoBo Stewart?

21 A. He was a new delivery person.

22 Q. And was this the young boy that has been described as  
23 a high school student that was working a summer job?

24 A. Yes, sir.

25 Q. Do you know how many days he had been at work when he  
26 got killed?

27 A. Without the time cards, I'm not positive. I think it  
28 was two days. I think that was his second day.

29 Q. His second day at work?



1 A. (Witness nods her head.)

2 Q. And who is Robert Golden?

3 A. He was another new delivery person that was, had just  
4 started work at the store.

5 Q. Was that his first day to work?

6 A. (Witness nods her head.)

7 Q. Do you know Curtis Flowers?

8 A. No, sir.

9 Q. Do you know from the operating books and procedures  
10 whether he ever worked at Tardy Furniture or not?

11 A. Yes, sir.

12 Q. Do you know approximately how long before your mother  
13 was killed that he worked there?

14 A. I know that he was there that first week of July and  
15 that weekend before that.

16 Q. I want to hand you Exhibit 102 which has already been  
17 identified as a payroll check and ask you to look at that if  
18 you would. Can you identify what that exhibit is?

19 A. A check from my mother from Tardy Furniture Company  
20 to Curtis Flowers, payroll check--

21 Q. --And-- I'm sorry.

22 A. A payroll check.

23 Q. It is a payroll check. Are you familiar with any  
24 batteries that were dropped off of a truck?

25 A. Yes, sir.

26 Q. Do you know how much money damage was caused by  
27 dropping those batteries off?

28 A. Close to five hundred dollars, somewhere between  
29 three and five; I'm not sure exactly.

1 Q. And was this, what type of batteries were these?

2 A. Golf cart batteries, or six.

3 BY MR. EVANS: May I have the Court's indulgence  
4 just a moment, Your Honor?

5 (Pause)

6 BY MR. EVANS:

7 Q. Ms. Ballard, the safe that you have described, you  
8 have described it as being in the office. What part of the  
9 store was that office located in?

10 A. In the main side. If you are facing the building,  
11 it's, the door is at the front of the building on the right,  
12 and it's all connected inside. But from the outside it's two  
13 buildings. And it's straight at the very back of the store.

14 Q. All right, the jury has seen pictures that show the  
15 counter area inside the store. Would it be on further back  
16 behind the counter?

17 A. Oh, yeah. At the very, very back.

18 Q. And normal procedures during the nighttime, would  
19 this safe be locked or unlocked?

20 A. Locked.

21 Q. And once your mother came to work and took the cash  
22 drawer with the open-up money out of the safe, would she lock  
23 it back or leave it unlocked?

24 A. They did not lock it during the daytime. It was left  
25 unlocked.

26 BY MR. EVANS: Your Honor, I will tender the  
27 witness.

28 CROSS-EXAMINATION BY MR. BILLY GILMORE:

29 Q. Ms. Ballard, I realize this is hard for you, but I

1 have just two or three questions I would like to ask you. I  
2 believe you have Exhibit 102 in front of you there that Mr.  
3 Evans handed you. Payroll check?

4 A. Uh-hum.

5 Q. What is the total amount made out? How much is it;  
6 if you cashed it, how much would it be?

7 A. \$82.58.

8 Q. Okay, on the left side of the check does that tell  
9 what that is for?

10 A. Yes, sir.

11 Q. Okay, could you tell us basically what it says on the  
12 left side?

13 A. It says salary: 17 hours, 11/12; \$5.00 an hour. It  
14 shows the social security, Medicare and the total taken out.

15 Q. So there would be a total of \$89.42 less the tax?

16 A. Right.

17 Q. And he was to receive \$82.58?

18 A. Correct.

19 Q. Is there any deductions other than for tax?

20 A. No, sir.

21 Q. There is no deductions for any advances or any  
22 damages?

23 A. No, sir.

24 BY MR. BILLY GILMORE: May I approach, Your  
25 Honor?

26 BY THE COURT: Do you want to show them--

27 BY MR. BILLY GILMORE: This is not an exhibit,  
28 Your Honor. She has the exhibit, Your Honor.

29 BY THE COURT: All right.

1 BY MR. BILLY GILMORE:

2 Q. Ms. Ballard, I call your attention to Exhibit 106.  
3 It's, I guess you call it a petty cash form?

4 A. It's a checkup sheet; yes, sir.

5 Q. Okay. Now if you would, take that and look at it,  
6 please, ma'am. The part that says petty cash, do you see what  
7 I'm talking about?

8 A. Yes, sir.

9 Q. All right, where it says cash on hand, what is the  
10 amount?

11 A. \$300.00.

12 Q. And down at the bottom it says a total. What is that  
13 total?

14 A. \$300.00.

15 Q. So instead of being \$400.00, it was \$300.00?

16 A. No, sir. There is \$400.00 in the drawer, but the  
17 normal balance of the drawer is \$300.00. There is a hundred  
18 dollars extra in there that was late charges that was put in  
19 the drawer. That is accounted for separately and reported  
20 separately on the checkup sheet when it's deposited.

21 Q. Would that explain the minus 100 at the top?

22 A. Yes, sir. It would.

23 Q. Okay, now--

24 A. --You have to take that one hundred out to get to the  
25 three hundred.

26 Q. Okay. Now on the right hand side there is a listing  
27 of various money. All right, at the top it has the minus \$100,  
28 and that is what you are referring to?

29 A. Right.

1 Q. Then the next figure is \$260.00. What would that  
2 indicate to you?

3 A. That is the, the larger bills: Tens, twenties, and a  
4 hundred if there were one.

5 Q. Okay. All right, then let me come back to that.  
6 Then the next listing is \$95.00. What would that indicate?

7 A. That is the total of the five dollar bills.

8 Q. That is five dollar bills. Okay, then there is a  
9 \$34.00. Would that indicate to you?

10 A. The total of the one dollar bills.

11 Q. Okay, now in the cash drawer we have seen pictures,  
12 and it shows three compartments for bills.

13 A. Correct.

14 Q. Now we have established that is \$34.00 in ones,  
15 \$95.00 in fives, and then there would be other bills. Would  
16 she not keep small bills and deposit larger bills?

17 A. No, sir. We always leave tens, twenties, fives, and  
18 ones in the drawer.

19 Q. But you normally wouldn't leave a one hundred dollar  
20 bill in the drawer?

21 A. Normally, you would not. I don't-- unless-- I mean  
22 normally not.

23 Q. All right. So you feel fairly sure, Ms. Ballard,  
24 that \$260.00 would represent tens and twenties?

25 A. Fairly sure, but I didn't see the money, so I don't  
26 know for certain.

27 Q. Well, I mean we are just talking about a normal  
28 operation. That's what you have been testifying to?

29 A. In a normal operation, yes.

1 Q. Normally the 260 would have represented tens and  
2 twenties?

3 A. It would normally. It could have been a hundred, but  
4 I do not know.

5 Q. And 95 would normally represent fives? And 34 would  
6 normally represent ones. Normal operation; is that right?

7 A. That's right.

8 BY MR. BILLY GILMORE: No further questions.

9 BY THE COURT: Redirect?

10 BY MR. EVANS: I'm going to show this to  
11 opposing Counsel before I hand it to the witness.

12 (Documents shown to Counsel opposite.)

13 BY MR. EVANS: May I have this item marked for  
14 identification?

15 BY THE COURT: Yes.

16 (COPY OF TIME SHEET ON INDEX CARD AND COPY OF  
17 CHECK WAS MARKED AS STATE'S EXHIBIT S-110 FOR  
18 IDENTIFICATION.)

19 REDIRECT EXAMINATION BY MR. EVANS:

20 Q. Ms. Ballard, I want to hand you Exhibit 110 for  
21 identification, which is a copy of several items and ask you to  
22 look at that if you would?

23 A. (Witness complies.)

24 Q. Are you familiar with that item?

25 A. It's his time sheet, Curtis Flowers' time--

26 Q. --Curtis Flowers' time sheet?

27 A. (Witness nods her head.)

28 Q. And does that time sheet show that he was paid any  
29 advances on his paycheck?

1 A. Yes.

2 Q. And how much was he paid in advance on his paycheck?

3 A. \$30.00.

4 BY MR. EVANS: Your Honor, I offer this exhibit  
5 into evidence.

6 BY THE COURT: Any objection?

7 BY MR. JOHN GILMORE: No, Your Honor.

8 BY THE COURT: What number is it?

9 BY THE WITNESS: 110.

10 (COPY OF TIME RECORD ON INDEX CARD PREVIOUSLY  
11 MARKED AS STATE'S EXHIBIT S-110 FOR IDENTIFICATION  
12 WAS RECEIVED IN EVIDENCE.)

13 BY THE COURT: Your Honor, that is all of this  
14 witness. We would ask that she be finally excused.

15 BY THE COURT: Okay. You are free to leave, Ms.  
16 Ballard, or you are also free to stay in the  
17 courtroom if you would like.

18 WITNESS EXCUSED.

19 BY THE COURT: Okay, we are going to take a  
20 break for lunch. Ladies and gentlemen, I will let  
21 y'all go for lunch until 1 o'clock with the same  
22 instructions that I have had at every break. See you  
23 then.

24 (FOLLOWING THE NOON RECESS ON OCTOBER 15, 1997,  
25 TRIAL RESUMED IN OPEN COURT WITH THE DEFENDANT AND  
26 WITH THE JURY PRESENT AS FOLLOWS:)

27 BY THE COURT: Mr. Evans, who will you have  
28 next?

29 BY MR. EVANS: Joe Andrews.

1 BY THE COURT: Joe Andrews.

2 BY MR. EVANS: He has not been sworn.

3 JOE EDWARD ANDREWS, JR.

4 a white male called to testify as a witness by the State of  
5 Mississippi, having first been duly sworn, testified as  
6 follows, to-wit:

7 BY THE COURT: Have a seat up here, please.

8 State your name for the record, please, sir.

9 BY THE WITNESS: Joe Edward Andrews, Jr.

10 DIRECT EXAMINATION BY MR. EVANS:

11 Q. Mr. Andrews, how are you employed?

12 A. I am employed as forensic scientist at the  
13 Mississippi Crime Laboratory in Jackson.

14 Q. And what are your duties at the Crime Lab?

15 A. I work in the microanalysis section of the  
16 laboratory, and microanalysis is the section that deals with  
17 the analysis of what is commonly called trace evidence and  
18 includes such things as hairs, textile fibers, paints, glass,  
19 gunshot residue, and footwear and tire track impressions.

20 Q. What type of educational background do you have that  
21 allows you to perform your duties?

22 A. I have a Bachelor of Science Degree from the  
23 University of Mississippi in forensic science. I have also  
24 received training from the Federal Bureau of Investigation on  
25 several different aspects of microanalysis. I have received  
26 training from the McChrome Research Institute on forensic  
27 applications of the scanning electron microscope. I have also  
28 attended numerous seminars and workshops over the years in my  
29 area of expertise.



Q. And in what specific fields have you been qualified by the courts in this state as an expert in?

A. As an expert in the field of microanalysis.

BY MR. EVANS: Your Honor, at this point before I go further, I would offer Mr. Joe Andrews as an expert in the field of microanalysis.

BY THE COURT: Any objection?

BY MR. JOHN GILMORE: No, Your Honor.

BY THE COURT: The Court accepts him as an expert in that field.

BY MR. EVANS:

Q. Did you have an occasion, Mr. Andrews, to be called upon to make several different comparisons in the case that we are here on today?

A. Yes, sir. I did.

Q. Specifically, were you asked to examine some photographs of some bloody tennis shoe tracks?

A. Yes, sir. I was.

Q. I would like to show you Exhibit 73, 74, 75, and 76. Can you see them? If I place them here, can you see them from there?

A. Yes, sir. I can.

Q. Have you seen these exhibits before?

A. Yes, sir.

Q. How did they come into your contact?

A. They were submitted to the Crime Laboratory in Jackson by our crime scene specialist, Melissa Schoene. They were submitted as photographs and negatives of suspected shoe print impressions. These particular exhibits were enlargements

1 that were made from some of the photographs so that the  
2 photographs would be to scale, so that the size of the  
3 impression was at actual size.

4 Q. And are these impressions to scale at this time?

5 A. Yes, sir. They are.

6 Q. What specifically in relationship to those bloody  
7 tennis shoe tracks, what were you asked to do?

8 A. I was originally asked to examine them to see if  
9 there was any information I could determine from those as to a  
10 possible make or model of shoe that could have left that  
11 impression and any other information that I might could  
12 ascertain from looking at the photographs as to what portion of  
13 the shoe it could possibly be.

14 Q. All right, were you able to make the determination as  
15 to what type and size shoe made this impression?

16 A. Initially in my initial examination, the only thing  
17 that I could determine from the examination of the impressions  
18 was that it appeared to be a partial shoe print impression, and  
19 it appeared to be the heel area of the shoe.

20 Q. All right. Through your investigation, did you take  
21 any steps that allowed you to determine what type of shoe left  
22 this impression?

23 A. Yes, sir. There were, through looking at shoes from  
24 different manufacturers, I found a shoe that was very similar  
25 in tread design or in out sole design, and that shoe I  
26 determined to be a Fila tennis shoe.

27 Q. Any specific style of Fila tennis shoe?

28 A. At that time I didn't know a specific style. The  
29 particular shoe I had looked at was a Grant Hill.

1 Q. All right. Did you have an occasion to have an empty  
2 tennis shoe box provided to you?

3 A. Yes, sir. One was submitted to the laboratory.

4 Q. And for what purpose was it submitted?

5 A. Originally, it was submitted, I believe, to determine  
6 whether or not the shoe that would have come in that box could  
7 have left this particular impression, and I believe the box was  
8 also submitted for a latent print exam.

9 Q. Mr. Andrews, I want to hand you Exhibit 88 and ask  
10 you to examine this exhibit if you would?

11 A. (Witness complies.)

12 Q. Have you seen that exhibit before?

13 A. Yes, sir; I have. I can recognize it by the  
14 Mississippi Crime Laboratory case number, exhibit number, and  
15 it bears my initials on the green tape sealed along this side.  
16 It was submitted as containing or marked as being one Fila shoe  
17 box.

18 Q. Would you open the package for us. Do you need a  
19 knife?

20 A. No, sir. I think I can get it.

21 Q. For the record, may the record reflect that this  
22 package is sealed, and Mr. Andrews is opening it at this time,  
23 Your Honor?

24 BY THE COURT: Let the record reflect that.

25 BY MR. EVANS:

26 Q. It is sealed well too, isn't it, Mr. Andrews?

27 A. Yes, sir.

28 Q. All right, you have taken a shoe box out of the  
29 package; is that correct?

1 A. Yes, sir.

2 Q. And have you seen that shoe box before?

3 A. Yes, sir; I have.

4 Q. Is that the shoe box that was submitted to you on  
5 this case by officers with the Mississippi Highway Patrol?

6 A. Yes, sir. It is. I can identify it because it bears  
7 my initials on the end of the box where I placed them.

8 BY MR. EVANS: Your Honor, at this time we offer  
9 Exhibit 88 into evidence.

10 BY THE COURT: Any objection?

11 BY MR. BILLY GILMORE: Your Honor, I don't  
12 believe the State has proven the proper predicate to  
13 introduce this. There has been no testimony as to  
14 where it came from.

15 BY MR. EVANS: If he has an objection, I will go  
16 further and bring it in. I didn't think they would  
17 have an objection on this part at this point.

18 BY THE COURT: Well, he has testified it was  
19 delivered by the officers, hasn't he?

20 BY MR. EVANS: Yes, sir. I don't understand  
21 what the objection is at this point.

22 BY THE COURT: I don't either.

23 BY MR. BILLY GILMORE: We will withdraw the  
24 objection.

25 BY THE COURT: Okay. That is what number? 88?

26 BY MR. EVANS: 88.

27 BY MR. BILLY GILMORE: Your Honor, for the  
28 record if I may, my objection was because there has  
29 been no chain on this evidence.

1 BY THE COURT: Okay. Are you objecting or not  
2 objecting?

3 BY MR. BILLY GILMORE: No, sir. I just wanted  
4 the record to reflect that's the reason I objected.

5 BY THE COURT: Okay, let the record reflect he  
6 we withdrew his objection, and it's admitted. We are  
7 just admitting the box.

8 BY MR. EVANS: Okay, we need to retag it then.

9 BY THE COURT: Let's just admit the box. The  
10 sack is not relevant.

11 BY MR. EVANS: May I have the box listed as 88A,  
12 Your Honor?

13 BY THE COURT: Sure.

14 BY MR. EVANS: For a clear record.

15 (SHOE BOX ITSELF WAS RECEIVED IN EVIDENCE AND  
16 MARKED AS STATE'S EXHIBIT S-88A.)

17 BY MR. EVANS:

18 Q. I will hand you Exhibit 88 A back and ask you if you  
19 made any comparisons in relationship to that exhibit?

20 A. I didn't make any comparisons in relationship to the  
21 exhibit, but I used the information present on the end of the  
22 box in order to advise the investigating officers as to what  
23 type of shoe they were possibly looking for.

24 Q. And what type of shoe was that?

25 A. According to the information on the end of the box,  
26 this is a M's Grant Hill II MID shoe design and size ten and a  
27 half.

28 Q. And it is a Fila shoe; is that correct?

29 A. Yes, sir. It's a Fila brand name.

1 Q. And based upon giving that information to the  
2 officers, did they go out and purchase a pair of shoes that was  
3 the same type of shoes that would have come in that box?

4 A. Yes, sir. They did.

5 Q. I will hand you Exhibit 89 and ask you to examine  
6 that exhibit if you would.

7 A. (Witness complies.)

8 Q. Can you tell the Court what that exhibit is?

9 A. Yes, sir. It's a bag marked as containing Fila  
10 shoes. I can identify it also by the Mississippi Crime  
11 Laboratory case number, exhibit number, and it bears my  
12 initials on the green tape at the bottom.

13 Q. All right. Is this the pair of shoes that at your  
14 direction officers went out and purchased based upon the  
15 information you had given them?

16 A. Yes, sir. That's correct.

17 Q. Would you open that container, please.

18 A. (Witness complies.)

19 Q. Now that you have taken the box out, would you  
20 examine the box and the contents of it, please.

21 A. (Witness complies.)

22 Q. Is that the shoes that you have just described for  
23 the jury?

24 A. Yes, sir. I can recognize them by the Mississippi  
25 Crime Laboratory case number, exhibit number, and my initials  
26 that I placed on the inside of the shoe.

27 Q. After receiving the box from the officers and then  
28 receiving the shoes to look at, were you able to compare those  
29 shoes in Exhibit 89 to the bloody shoe tracks that were left in

1 Tardy Furniture?

2 A. Yes, sir; I was.

3 Q. Were you able to make any determination from that  
4 comparison?

5 A. Yes, sir.

6 Q. Would you explain to the jury what steps you took to  
7 make that comparison?

8 A. As I said, initially the original photographs were  
9 examined, and four of the negatives were chosen for  
10 enlargements. And those negatives were enlarged so that the  
11 photographs were back to natural size or to actual size, and  
12 you can tell that by the fact that all the photographs bear a  
13 scale. And basically, the scale was produced back to the-- the  
14 scale was the actual size of the original scale. And therefore  
15 the shoe prints or the impressions are back to actual size.

16 Upon receiving the pair of shoes in State's Exhibit--

17 Q. 89.

18 A. --89, I then took this pair of shoes and produced  
19 test impressions from these shoes. Those test impressions were  
20 made using an inkless ink method of impression where you put  
21 the substance on the bottom of the shoe, press it on a  
22 specially sensitized paper, and it makes a-- it turns it a dark  
23 black impression. Those impressions were then reproduced on a  
24 clear overlay, and that overlay was used to compare to the  
25 original photographs.

26 Q. All right. And after your tests, do you have an  
27 opinion as to whether the same type of shoe that you have in 89  
28 left the impressions in the bloody tennis shoe tracks?

29 A. Yes, sir. I do.

1 Q. And what is that opinion?

2 A. This pair of shoes, which I failed to mention, is a  
3 pair of Grant Hill Olympic tennis shoes made by Fila in size  
4 ten and a half. The impression from the right heel of this  
5 pair of shoes is consistent in overall size, shape and design  
6 characteristics with the partial impressions on the  
7 photographs.

8 BY MR. EVANS: Your Honor, may I have the  
9 witness step down and bring the right shoe with him?

10 BY THE COURT: Yes, sir.

11 BY MR. EVANS:

12 Q. Mr. Andrews, I want to get you, if you would, to  
13 stand to the side of this where all the jury can see, and if  
14 you would, point out and explain to the jury how you made your  
15 comparison and what part of the Fila Grant Hill, size ten and a  
16 half shoe is consistent with having left this bloody tennis  
17 shoe tracks?

18 A. If you look at each of the photographs, you will  
19 notice the most prominent feature is the herringbone design  
20 grooves that you can see going up and down. And then you see  
21 this feature that looks like an upside down "A" in all the  
22 photographs. If you look at the bottom of the shoe, you see  
23 that that basically is an upside down "A," and it has a feature  
24 on the top of it that on the bottom of the shoe looks like a,  
25 almost like a script 2. The 2 is, on all the photographs is  
26 pretty much blotted out. You can tell by looking at each of  
27 these photographs that there was an excessive amount of blood  
28 or what appeared to be blood in each of these photographs that  
29 blotted out some of the overall detail in the impressions. But



1 the amount of impression that is still left is sufficient to  
2 say that the overall size and shape of the impression and the  
3 relationship between all the different design characteristics  
4 that are present are consistent with those on this size ten and  
5 a half pair of Grant Hill Fila shoes.

6 Q. All right. You may take the stand.

7 BY MR. EVANS: Your Honor, opposing Counsel  
8 would like to look at Exhibit 89. I have no  
9 problem.

10 (Exhibit S-89 was handed to Mr. Billy Gilmore.)

11 BY MR. EVANS: Is that all?

12 BY MR. BILLY GILMORE: Yeah.

13 BY MR. EVANS:

14 Q. Mr. Andrews, to make sure the record is clear, you  
15 are not saying that this shoe left that impression are you?

16 A. No, sir. I am saying that a shoe of similar size,  
17 shape and design characteristics could have made that  
18 impression in the photographs.

19 Q. And would it be your expert opinion that that track,  
20 that bloody tennis shoe track was consistent with having been  
21 made by a Fila Grant Hill, size ten and a half right shoe?

22 A. Yes, sir.

23 Q. And that would be consistent with the type of shoes  
24 that would have been in the shoe box in Exhibit 88 that  
25 officers from the Mississippi Highway Patrol furnished to you?

26 A. Yes, sir. That's correct.

27 Q. Were you also asked to make some tests in  
28 relationship to a gunshot residue kit in this case?

29 A. Yes, sir. I was.

1 Q. I'm going to hand you Exhibit 87 and ask you to  
2 examine this if you would. I'm going to set these out of the  
3 way.

4 A. (Pause while witness looks at Exhibit S-87.)

5 Q. Have you had a chance to examine that exhibit?

6 A. Yes, sir.

7 Q. And that was Exhibit 87, wasn't it?

8 A. Yes, sir.

9 Q. Under what conditions did you first come into contact  
10 with Exhibit 87?

11 A. I retrieved this particular exhibit from our evidence  
12 vault at the Mississippi Crime Laboratory in Jackson.

13 Q. And what tests were you asked to perform on that  
14 exhibit?

15 A. This exhibit, just to identify it, is a gunshot  
16 residue evidence collection kit marked with the name, Curtis G.  
17 Flowers. I was requested to examine the samples contained  
18 inside that kit for the presence of gunshot residue.

19 Q. Does the kit itself tell what date and time that the  
20 test was taken?

21 A. I believe it is on the information sheet inside the  
22 kit. It's not on the outside.

23 Q. All right, would you open Exhibit 87, please.

24 A. (Witness complies.)

25 Q. And if you would, remove the contents?

26 A. Inside the kit is a gunshot residue analysis  
27 information sheet and the four samples vials that were included  
28 in this kit.

29 Q. All right, and on the information sheet, does it tell

1 who the test was taken of and when and what date and time?

2 A. According to the information sheet, the suspect's  
3 full name was Curtis G. Flowers. The kit was collected by Jack  
4 Matthews at 14:00 on 7/16 of '96.

5 Q. And for anybody that is not familiar with military  
6 time, what time is 14:00?

7 A. 2:00 P M.

8 Q. And I assume you are familiar with gunshot residue  
9 kits?

10 A. Yes, sir.

11 Q. Would you explain to the jury before we go into your  
12 findings, of what a gunshot residue kit is?

13 A. Okay, if I can explain what gunshot residue is first.

14 Q. That will be fine.

15 A. Gunshot residue, the type of gunshot residue that I  
16 test for is residue that is produced during the discharge of  
17 the weapon. When the firing pin strikes the primer of a modern  
18 cartridge case, it causes an ignition of that primer  
19 composition. That primer composition then ignites the powder  
20 charge, and that forces the projectile out of the gun.

21 During that ignition process, components of the  
22 primer composition are vaporized to a gaseous form, and that  
23 gas is forced out of any opening that might be present in the  
24 weapon. Once that gas strikes the cooler surrounding air  
25 outside the weapon, those gases condense back into solid  
26 particles that have a unique morphology, which is a size and a  
27 shape, and a unique elemental composition that allows you to  
28 examine for the presence of those particles and determine  
29 whether or not they are indeed gunshot residue.

1           The gunshot residue kit is designed to collect  
2 samples from the hands of any person that is believed to have  
3 either fired a weapon or been in close proximity to a weapon  
4 when it was discharged. It is based upon a set of samples that  
5 consist of a small aluminum stub that is coated with a double  
6 sided adhesive tape. And that adhesive tape is gently applied  
7 to the surface that you are sampling, the idea being to remove  
8 any particles that will be present upon the surface of the  
9 skin.

10           Those samples are then subjected to a technique  
11 called scanning electron microscopy with energy dispersive  
12 x-ray analysis that allows you first of all to visualize those  
13 microscopic particles and then do elemental analysis of those  
14 particles to try to determine if they fit the criteria for  
15 gunshot residue.

16           Q. And would you explain why there are four separate  
17 vials there?

18           A. Yes, sir. These particular kits are designed to  
19 collect samples from the backs and the palms of both hands.  
20 Normally when we talk about the back of a hand, we are talking  
21 the area between the first finger and the thumb on the web area  
22 on the outside of the hand. And if you hold a weapon, a  
23 handgun in normal fashion, that would be the area of the hand  
24 that would be most exposed to any residue that was being  
25 emitted from that particular weapon.

26           Q. And for the record, you are pointing to the back of  
27 your hand or the web area between the thumb and finger?

28           A. Yes, sir.

29           Q. Did you examine the contents of that exhibit before

1 you made any analysis?

2 A. As far as just a routine analysis, our routine  
3 procedure is to open the kit, to examine the information sheet,  
4 and then to separately mark each one of the vials and each one  
5 of the stubs inside the vials with our case number, exhibit  
6 number and initials. We also do a cursory examination of the  
7 stub looking for things like are-- do the stubs have a  
8 significant amount of blood on them or something of that nature  
9 that could interfere with the test.

10 Q. All right, in this particular case, did you test all  
11 four of these vials?

12 A. Yes, sir. I did.

13 Q. And did you find gunshot residue in any of these  
14 vials?

15 A. Yes, sir; I did.

16 Q. And in which vial did you find the gunshot residue?

17 A. The sample that was submitted as being from the right  
18 back was found to contain one particle which could be  
19 positively identified as gunshot residue.

20 Q. And if you would, hold your hand up and point out to  
21 the ladies and gentlemen of the jury the part of your hand that  
22 that vial was taken from?

23 A. The right back sample would normally be collected  
24 from the area on the back of the right hand between the first  
25 finger and the thumb on the web area.

26 Q. And if a person that was right handed had fired an  
27 automatic pistol, what would be the main part of the hand that  
28 you would expect to find gunshot residue?

29 A. If he held the gun in his right hand, I would

1 expect most of the residue to be deposited on the back of his  
2 right hand in that area between the thumb and the first  
3 finger.

4 Q. How long will gunshot residue normally remain on a  
5 hand after a weapon is fired?

6 A. It will vary significantly with environmental  
7 factors. Normally on living individuals, that is someone who  
8 after they fire the weapon, goes about their normal activities,  
9 you don't normally expect to find significant residue after  
10 four hours. Numerous studies have been done that show that  
11 almost immediately after the firing, you start losing residue  
12 from your hands, and any activity that rubs or brushes against  
13 the surfaces of the hands can remove particles from that  
14 surface. Certainly something like washing your hands or  
15 getting the hands wet with any type of substance that would  
16 wash those particles from the hands could significantly reduce  
17 that time.

18 Q. All right, assuming, and I know you weren't there,  
19 but assuming as the record would show that there would be  
20 approximately four hours time span between the killings and the  
21 time the gunshot residue was recovered, would you expect it to  
22 be significantly less residue at the time of the test than it  
23 would have been at an earlier time?

24 A. Yes, sir. Assuredly.

25 Q. What elements are in gunshot residue?

26 A. The three main elements that we look for in doing our  
27 specific tests are the elements lead, barium, and antimony.  
28 Studies have shown that the combination of those three elements  
29 on a round, spherical, molten particle is unique to gunshot

1 residue. It won't be found, that particular combination on  
2 that particular kind of particle won't be found anywhere else  
3 in nature.

4 Q. And it is your opinion that anything that has these  
5 three criteria and is on a round, spherical molten particle  
6 could be nothing other than gunshot residue?

7 A. That particle would be positively identified as  
8 gunshot residue to the exclusion of all other environmental  
9 sources.

10 Q. And did this element that you found, did it have all  
11 three - lead, barium, and alimony?

12 A. Antimony.

13 Q. Antimony, I'm sorry.

14 A. Yes, sir.

15 Q. And how about the size, shape and appearance?

16 A. Yes, sir. They all fit the criteria to be positively  
17 identified as gunshot residue.

18 Q. Would it be your expert opinion that the gunshot  
19 residue test kit that was taken of Curtis Flowers was  
20 absolutely positive for gunshot residue being recovered from  
21 the back of his right hand?

22 A. Yes, sir. One particle of gunshot residues was  
23 positively identified from the sample from the back of the  
24 right hand.

25 BY MR. EVANS: Your Honor, I will tender the  
26 witness.

27 BY MR. BILLY GILMORE: May I proceed, Your  
28 Honor?

29 BY THE COURT: Uh-hum.



1 CROSS-EXAMINATION BY MR. BILLY GILMORE:

2 Q. While we are on that subject, let me ask you two or  
3 three things. Now I believe you said you found a particle?

4 A. One particle, yes, sir.

5 Q. What are you talking about, a particle?

6 A. A particle in this particular case was a small,  
7 round, spherical, molten particle approximately three microns  
8 in diameter that once it was elementally analyzed, was found to  
9 contain the elements lead, barium and antimony.

10 Q. Is that something you can see with the naked eye?

11 A. A three micron particle would be essentially  
12 invisible to the naked eye.

13 Q. And that is the size of this particle?

14 A. Yes, sir. Just to give you an idea of how-- there  
15 are 25,400 microns per inch, so a one micron particle would be  
16 1/25,400 of an inch, so--

17 Q. A little bitty fellow?

18 A. Yes, sir. It would be invisible to the naked eye.

19 Q. All right, sir. Now you said there is three  
20 components, was lead, barium and antimony?

21 A. Yes, sir.

22 Q. Okay. Now you can find lead, of course, in  
23 batteries?

24 A. Yes, sir.

25 Q. And you can find barium in spark plugs?

26 A. I believe so; yes, sir.

27 Q. And you can find antimony in the particle that is  
28 subsequently used in lead to strengthen lead; is that right?

29 A. Yes, sir. It is added as a trace element in a lot of



1     lead application because it changes the melting properties of  
2     the lead.

3           Q.     Okay. Now car batteries would have some of these  
4     components, would they not?

5           A.     Yes, sir. They would.

6           Q.     Were you told that the Defendant had handled some car  
7     batteries prior to this?

8           A.     No, sir.

9           Q.     So when you are saying you looked for these three  
10    particular things in gunshot residue, now does that mean  
11    gunpowder?

12          A.     No, sir. These particular particles, the primary  
13    components of these particles would come from the primer  
14    composition. You can get added components from the cartridge  
15    case, from the projectile itself, and even from the gun. But  
16    the main components, the lead, the barium, and the antimony are  
17    derived from components of the primer composition.

18          Q.     All right, sir. Let me ask you this. I'm a muzzle  
19    loader hunter. You put a little cap on your muzzle loader to  
20    fire your black powder. Would that be found in that little cap  
21    that goes on there?

22          A.     I have never-- it would depend upon the brand of cap,  
23    but the caps could have some of the components; yes, sir.

24          Q.     What other type firing mechanism would you find these  
25    three components?

26          A.     You can find it, in addition to handgun ammunition,  
27    you can find it in long arm ammunition, shotgun ammunition.  
28    You can find some of the components in primer compositions used  
29    in stud guns, in the pneumatic, in the stud gun that uses a

1 projectile to fire the stud into, in carpentry work.

2 Q. Carpenters that shoot a nail into concrete would?

3 A. Yes, sir.

4 Q. All right, sir. So you are not saying that this  
5 particular one little bitty tiny particle that you found came  
6 from a gunshot?

7 A. That particular particle is positively gunshot primer  
8 residue. It can't be anything else.

9 Q. All right, sir. What about fireworks?

10 A. Fireworks normally have different components. They  
11 don't have the same components in them that gunshot primer  
12 compositions have in them.

13 Q. Do various fireworks have different components?

14 A. Yes, sir. Most of the fireworks are based on either  
15 black powder or flash powder. There are some components in  
16 some of the fireworks that add color to the fireworks that is  
17 seen in some brands of handgun ammunition primer composition  
18 now. But that is an entirely different element, and it  
19 wouldn't be confused with gunshot primer residue particles.

20 Q. But say you fired a combination of fireworks where  
21 you would get some residue from some of all, could that mix?

22 A. No, sir. One of the advantages to doing gunshot  
23 primer residue examinations by scanning electron microscopy is  
24 that because of the fact that you can find individual particles  
25 and you can check the composition of that individual particle,  
26 and if that one individual particle contains those three  
27 elements in that particular combination, then that particle is  
28 unique.

29 With some of the older testing techniques where you

1 did a bulk analysis, you could run into problems where you had  
2 a different combinations of environmental sources that could  
3 add each one of those individual elements. But because with  
4 scanning electron microscopy, you are looking at a single  
5 particle and doing the elemental composition on a single  
6 particle, if you can find that composition of elements on a  
7 single particle that has the right morphology, that particle  
8 has to be gunshot residue to the exclusion of all other  
9 environmental sources.

10 Q. But you could get some of these particles out of  
11 regular car batteries?

12 A. You could get some of the components out of regular  
13 car batteries but not these particular particles.

14 Q. All right, sir. Let me ask you about the shoes now.  
15 Now you tested or you compared, you say, at the heel area of a  
16 shoe; is that correct?

17 A. Yes, sir.

18 Q. Now I noticed throughout your statement you say it is  
19 similar in design, consistent with partial photographs. You  
20 haven't positively identified that as being the one and the  
21 same type?

22 A. The impressions were consistent in overall size,  
23 shape, and design characteristics with that particular size ten  
24 and a half shoe. I couldn't positively identify those  
25 impressions to any shoe.

26 Q. So you can't be a hundred percent accurate then; is  
27 that what you're saying?

28 A. I don't think I understand your question.

29 Q. Well, I am referring to your testimony and you are

1 saying "similar" and "consistent," but you are not saying that  
2 that is the same design?

3 A. That design is consistent between those shoes which  
4 means it is the same design.

5 Q. Okay. Did you compare that with any other shoes  
6 other than this one pair?

7 A. No, sir. I'm sorry -- I did -- there was a pair of  
8 different type, a different brand name of shoe that was  
9 submitted for comparison against these photographs.

10 Q. And what brand was that?

11 A. That was a pair of Nike tennis shoes.

12 Q. And what was your instructions as far as examining  
13 that pair of shoes?

14 A. At that particular time it was to compare them to the  
15 photographs of the impressions taken at the crime scene to  
16 determine whether or not that shoe could have made those  
17 impressions.

18 Q. Do you know where that shoe came from?

19 A. According to the information that was given to the  
20 laboratory at the time it was submitted, it was a pair of shoes  
21 collected from Curtis Flowers.

22 Q. What other tests did you do other than the comparison  
23 test between the known shoe from Flowers to the track in the  
24 store?

25 A. Besides that particular comparison and the comparison  
26 against the pair of Fila tennis shoes that were submitted,  
27 none.

28 Q. None. But all you compared the known shoe of Mr.  
29 Flowers, you compared it just for the tread more or less on the

1 bottom of the shoe?

2 A. Yes, sir..

3 Q. Okay. You didn't compare it for anything else?

4 A. That was the examination I was requested to conduct.

5 Q. Okay, sir. Now different people wear a shoe out in a  
6 different manner, do they not?

7 A. Yes, sir.

8 Q. Okay, were you asked to see if this shoe compared  
9 with the wear and tear of the known shoe?

10 A. (No immediate response).

11 Q. For instance, was it worn on the right side of the  
12 heel or left side of the heel or back of the heel?

13 A. Which shoe are we talking about?

14 Q. The known shoe compared to the track?

15 A. The known shoe of Curtis Flowers?

16 Q. Yes, sir.

17 A. The only thing I was requested to, was to examine to  
18 see whether or not that particular shoe could have made those  
19 particular impressions. That shoe has an entirely different  
20 out sole pattern, and so it could not have produced those  
21 impressions.

22 Q. All right, sir. But you didn't, you didn't compare  
23 it to see if the characteristics of a shoe worn by a person  
24 would match another shoe. In other words, I run my shoes over  
25 on the right heel, and various people wear their shoes out in  
26 different manners. Did you compare the wear on the known shoe  
27 from Curtis Flowers to the track found in the store?

28 A. No, sir. I did not.

29 Q. Did not. But you could have?

1           A.    That is a comparison that can be done in certain  
2 situations.  It normally requires that you have numerous pairs  
3 of shoes from a particular suspect so that you can establish a  
4 pattern of wear for that particular individual.

5           Q.    How many pairs of shoes did you have from Mr.  
6 Flowers?

7           A.    I only had one pair that was submitted as being  
8 recovered from Mr. Flowers.

9           Q.    Okay.  Now you looked at the empty box, I believe you  
10 said?

11          A.    Yes, sir.

12          Q.    And I believe that is, that would be Exhibit 88 was  
13 the sack, and Exhibit 88 A was the Fila shoe box inside the  
14 sack?

15          A.    Yes, sir.  That's correct.

16          Q.    All right.  Now you said you examined it also for  
17 fingerprints?

18          A.    I said it was examined for the presence of latent  
19 prints.  I did not conduct that examination.

20          Q.    Do you know whether or not there was any fingerprints  
21 lifted from that box?

22          A.    I have no knowledge of what the results of that  
23 report or that examination was.

24          Q.    Do you know how many shoes are sold in that  
25 particular brand, style and make?

26          A.    I have information that I received from Fila dealing  
27 with that information; yes, sir.

28          Q.    And how many shoes of that particular kind are sold  
29 in this country?

1           A.    The Grant Hill II MID like came in this box?

2           Q.    The one like you examined, the known shoe that you

3 examined, the new shoe, in other words?

4           A.    According to information I received from Fila, all

5 shoes of the Grant Hill II, size ten and a half that they had

6 shipped as of April the 2nd, 1997, there were 221,189 pair.

7           Q.    A lot of shoes?

8           A.    Yes, sir.

9           Q.    Now do you have information as to whether all those

10 shoes are the same color?

11          A.    As far as the shoes being the same color?

12          Q.    Yes, sir.

13          A.    The top sole or the top portion of the shoe can

14 change depending on the exact style of shoe it is, but Fila

15 uses that exact same out sole for all of the Grant Hill II

16 shoes.

17          Q.    You are talking about the bottom?

18          A.    Yes, sir, the sole.

19          Q.    All right, sir. But as far as the top, do you know

20 how many different colors or designs for the top part of shoe

21 that Fila puts out?

22          A.    No, sir. I have no idea.

23          Q.    So when we look at the white shoe, the new shoe, we

24 don't know whether that is the same color that was purchased

25 one in the box, empty box?

26          A.    No, sir.

27          Q.    No way to tell?

28          A.    Fila could probably provide that information, but I

29 don't have it.

Redirect

1 Q. You don't have that information, okay, sir. Let me  
2 ask you one other thing on the gunshot residue kit. Is it  
3 possible that a gunshot residue kit could get contaminated  
4 while in the process of lifting it from someone?

5 A. If the officer or whoever was collecting the kit was  
6 not careful in how he handled the kit or the components of the  
7 kit or if they were not careful in how, whether or not they had  
8 residue on themselves, it is possible they could contaminate  
9 the kit.

10 Q. It's a known fact that police officers are required  
11 to do target practice and qualified as they call it every so  
12 often?

13 A. Yes, sir.

14 Q. And officers could very well have this residue on  
15 their hands?

16 A. Yes, sir.

17 Q. And it could rub off on someone else they were  
18 testing?

19 A. If they were not careful as to how they handled the  
20 samples or that other person, yes, sir.

21 BY MR. BILLY GILMORE: Court indulge me a  
22 moment.

23 (Defense Counsel confer.)

24 BY MR. BILLY GILMORE: Tender the witness, Your  
25 Honor.

26 REDIRECT EXAMINATION BY MR. EVANS:

27 Q. Mr. Andrews, if you were advised that the officer  
28 that took this test kit testified that before he took the kit,  
29 he washed his hands and wore rubber gloves to protect the kit,



1 would you feel that that officer had done everything necessary  
2 to protect the integrity of that kit?

3 A. That's the way we train officers to collect kits is  
4 to, if they feel like there is any doubt in their mind that  
5 they could contaminate the sample, to thoroughly wash their  
6 hands; if they have gloves available, to wear them, and then to  
7 handle the samples very carefully while they are taking the  
8 samples.

9 Q. Thank you. You have been asked about the Nike shoes  
10 that were provided to you that belonged to the Defendant that  
11 came off of his feet. What size were they?

12 A. Ten and a half.

13 Q. And I want to make sure that I clear up about this  
14 particle. This one particle that you recovered could not be  
15 anything other than gunshot residue; is that correct?

16 A. That's correct.

17 BY MR. EVANS: Nothing further, Your Honor. We  
18 would ask that this witness be finally excused.

19 BY THE COURT: All right, sir. You are free to  
20 go.

21 WITNESS EXCUSED.

22 BY THE COURT: Who do you have next?

23 BY MR. HORAN: Bill Thornburg.

24 BY THE COURT: Mr. Thornburg, have you been  
25 sworn?

26 BY THE WITNESS: Yes, sir.

27 BY THE COURT: You can have a seat up here,  
28 please, sir.

29 BY MR. HORAN: May I proceed, Your Honor?

1                                   **BILL THORNBURG,**

2       a white male having been called to testify as a witness by the  
3       State of Mississippi, having been previously sworn, testified  
4       as follows, to-wit:

5                   **BY THE COURT:**   State your name for the record,  
6                   please.

7                   **BY THE WITNESS:**   Bill Thornburg.

8                   **BY THE COURT:**   All right, Mr. Horan.

9       **DIRECT EXAMINATION BY MR. HORAN:**

10           Q.    Mr. Thornburg, how are you employed?

11           A.    With the Montgomery County Sheriff's Office.

12           Q.    How long have you been employed with the Montgomery  
13       County Sheriff's Department?

14           A.    I have been in law enforcement about 21 years.  I  
15       have been with the Sheriff's Department for, since 1981.

16           Q.    I want to direct your attention to August the, I  
17       believe the 14th, 1996.  Did you have an occasion to be at the,  
18       or day before that, be at the residence of Connie Moore?

19           A.    Yes, sir.

20           Q.    Of Connie Moore?

21           A.    Yes, sir.

22           Q.    And during the course of that being in her residence,  
23       did you see anything of any significance to you?

24           A.    Yes, sir.  I saw a shoe box in a dresser drawer, a  
25       Fila shoe box.

26           Q.    A Fila shoe box?

27           A.    Uh-huh.

28           Q.    Did you recover it at that time?

29           A.    No, sir.

1 Q. Did you know at that point in time that it was  
2 significant in any way?

3 A. No, sir; I didn't.

4 Q. Did you return to that residence at any date after  
5 that?

6 A. Yes, sir. The next day we went back to the  
7 residence.

8 Q. Okay, and for what purpose?

9 A. To get the shoe box.

10 Q. And did you recover that shoe box?

11 A. Yes, sir. We did.

12 Q. I'm going to hand you State's Exhibit 88 A, and tell  
13 me whether or not you can recognize that as being the box you  
14 recovered from the residence of Connie Moore?

15 A. Yes, sir.

16 Q. And how can you identify it? Do you see your  
17 initials on it?

18 A. Yes, sir. I initialed it.

19 Q. Is it materially in the same condition as it was? I  
20 know there are some markings on it, and there may be some dark  
21 stuff on it. Is it materially in the same condition?

22 A. Basically, yes, sir.

23 Q. Where did you see it the first time you saw it? What  
24 room was it in in that particular house? If you went in Connie  
25 Moore's house, how would you get to the room that you found  
26 that shoe box?

27 A. When you go in the living room, there's a hallway to  
28 the left. You go down that hallway. It will be the last room  
29 on the right.

1 Q. Whose room was that?

2 A. That was Connie's and Curtis.

3 Q. Curtis Flowers?

4 A. Yes, sir.

5 Q. The Defendant?

6 A. Yes, sir.

7 Q. And that box was subsequently sent to the Crime Lab?

8 A. Yes, sir.

9 Q. Y'all placed it in a brown bag, and it has been  
10 introduced into evidence.

11 A. Yes, sir.

12 Q. And y'all sent it for analysis purposes?

13 A. Yes, sir.

14 Q. I want to direct your attention to, I believe it is  
15 sometime June-- July the 19th, 1996. Did you have an occasion  
16 to go out to Doyle Simpson's mother's house in Montgomery  
17 County?

18 A. Yes, sir; I did.

19 Q. For what purpose was that?

20 A. Bob Tatum and I went out and took a metal detector to  
21 look for shell hulls or projectiles, anything that might--

22 Q. Did you examine a post out there?

23 A. Yes, sir. I did.

24 Q. At that point in time did you recover anything from  
25 that post?

26 A. Yes, sir. I recovered a projectile out of a cedar  
27 post.

28 Q. Was Mr. Simpson with y'all at that time?

29 A. He, I think he was there when we started. I don't

1 know whether he was still there when we got through or not.

2 Q. Did he give y'all some direction as to where to go  
3 and look for anything out there?

4 A. He told us that he shot his pistol a lot at cans and  
5 bottles. There was a cut out in the post that he would set  
6 them in there and shoot at them.

7 Q. I hand you what has been marked for identification  
8 purposes as State's Exhibit 86. Can you tell me whether or not  
9 you can identify that or it has your initials on it?

10 A. Yes, sir. My initials is on here.

11 Q. Does that contain the projectile that you recovered  
12 from the post at Mr. Simpson's mother's house?

13 A. Yes, sir.

14 Q. Is that package materially in the same condition as  
15 it was when you retrieved that particular projectile other than  
16 the fact it has got some Crime Lab information on it?

17 A. Basically, yes, sir.

18 Q. Did you turn that projectile over to anybody?

19 A. I turned it over to Jack Matthews, the investigator  
20 from the state.

21 Q. Does that particular package contain his initials on  
22 it?

23 A. Yes, sir. It does.

24 BY MR. HORAN: Okay. Your Honor, at this time I  
25 would like to have this exhibit introduced into  
26 evidence.

27 BY THE COURT: Objection?

28 BY MR. JOHN GILMORE: No, Your Honor.

29 BY THE COURT: Let it be marked.

1 (WHITE ENVELOPE CONTAINING PROJECTILE PREVIOUSLY  
2 MARKED AS STATE'S EXHIBIT S-86 FOR IDENTIFICATION WAS  
3 NOW RECEIVED IN EVIDENCE.)

4 BY MR. HORAN: Your Honor, I would like to  
5 introduce the shoe box also. I thought it had been  
6 introduced. I move for introduction.

7 BY THE COURT: It has been.

8 BY MR. HORAN: Oh, okay.

9 BY THE COURT: That one hasn't.

10 BY THE COURT REPORTER: I show both of them.

11 BY THE COURT: Isn't that right, Ms.-- isn't  
12 that right, Linda?

13 BY MR. HORAN: Both of them?

14 BY MR. EVANS: Both of them are in, yeah.

15 BY MR. HORAN:

16 Q. I want to hand you State's Exhibit 85 and tell me  
17 whether or not you can identify this particular package?

18 BY THE COURT: Excuse me. Linda. That has not  
19 been introduced, has it?

20 BY MR. EVANS: Yes, sir, through Jack Matthews,  
21 Your Honor.

22 BY THE COURT: Okay, well, I had it marked here,  
23 but then-- I'm sorry; that is my mistake. Both of  
24 them have been introduced, Mr. Horan.

25 BY MR. HORAN: Okay.

26 BY MR. HORAN:

27 Q. Can you identify this package that was previously  
28 introduced in evidence as a projectile Jack Matthews recovered  
29 from Mr. Simpson's house?

1 A. Yes, sir.

2 Q. Do you recognize that package?

3 A. Yes, sir.

4 Q. Were you with Mr. Matthews when he went to, back out  
5 to Doyle Simpson's mother's house and recovered another  
6 projectile?

7 A. Yes, sir. I was.

8 Q. Mr. Thornburg, you initially went to Tardy Furniture,  
9 did you not?

10 A. Yes, sir.

11 Q. On the day of the killings?

12 A. Yes, sir.

13 Q. Did you receive a call to leave that particular  
14 location?

15 A. Yes, sir. I did.

16 Q. And where did you go?

17 A. I went to Angelica Manufacturing Company.

18 Q. For what purpose?

19 A. They called and said a car had been broken into there  
20 and a gun stolen out of it.

21 Q. And you went down there to investigate that?

22 A. Yes, sir.

23 BY MR. HORAN: I tender, Your Honor.

24 BY MR. BILLY GILMORE: May I proceed, Your  
25 Honor?

26 BY THE COURT: Yes.

27 CROSS-EXAMINATION BY MR. BILLY GILMORE:

28 Q. Mr. Thornburg, I wasn't listening closely when you  
29 said, what day did you first see the shoe box at Connie Moore's

1 house?

2 A. I don't remember the date, but it was in August and--

3 Q. August of '96?

4 A. Yes, sir.

5 Q. Okay.

6 A. Then we went back the next day and got it. The date  
7 is on the shoe box.

8 Q. Okay, so you saw it the first day in August of '96,  
9 and you went back the next day which would still be in August  
10 of '96 and then got the box?

11 A. Yes, sir.

12 Q. Was the box in the same place you saw it the first  
13 time?

14 A. I assume it was. We didn't go back with Connie. She  
15 went back to the room and got it and brought it up front to us.

16 Q. Okay, so you asked Connie for the box, and she  
17 retrieved it for you?

18 A. Yes, sir.

19 Q. Did you examine the box when you first got it?

20 A. Yes, sir. We looked at it pretty close.

21 Q. Did you look inside?

22 A. Yes.

23 Q. Was there any kind of sales receipt inside?

24 A. I don't remember seeing one; no, sir.

25 Q. Was anything in the box at all, any paper or  
26 anything?

27 A. Not to my knowledge; no, sir.

28 Q. Did you attempt to lift any prints off the box?

29 A. No, sir. I did not.



1 Q. Now you said you went with Mr. Matthews on the 19th  
2 out to Doyle Simpson's mother's house; is that correct?

3 A. No, sir. I said Bob Tatum, the Chief of Police at  
4 Duck Hill, and I went out there on the 19th of July.

5 Q. Bob Tatum?

6 A. Yes, sir.

7 Q. Chief of Police at Duck Hill?

8 A. Yes, sir.

9 Q. Is that anywhere close to Winona?

10 A. It's about ten miles north of Winona.

11 Q. What was his connection with the investigation?

12 A. It wasn't any. He had a metal detector that belonged  
13 to the city, and he just volunteered to go with me and use that  
14 metal detector.

15 Q. What area were you searching out there?

16 A. We searched mostly in the back yard where Doyle  
17 showed us that he stood at the back steps most of the time and  
18 shot at a post out there at cans.

19 Q. What were you searching for, Mr. Thornburg?

20 A. We was searching for .380 hulls or projectiles that  
21 he might have shot.

22 Q. Did you find some?

23 A. Yes, sir.

24 Q. How many?

25 A. Found one hull that day and one projectile.

26 Q. Did you find other hulls or other projectiles that  
27 day?

28 A. No, sir. I don't believe so.

29 Q. Did you see any other holes in that post other than

1 where you got that one projectile?

2 A. Yes, sir. There was a bunch of holes, a bunch of  
3 holes.

4 Q. Did you attempt to retrieve any other projectiles out  
5 of the other holes in that post?

6 A. Not that day, no, sir.

7 Q. So the projectile that you just described, is that  
8 the one you received the first day?

9 A. The one in the white envelope, yes, sir.

10 Q. Okay, sir. And you went out there another day?

11 A. Yes, sir. Went out there with Investigator Matthews.

12 Q. Okay, sir, and what did you do after that day?

13 A. We found another hull and another projectile in the  
14 post, in that cedar post.

15 Q. How many days apart was this?

16 A. Seemed to me like it was about ten days.

17 Q. Okay. Do you remember about what date it was the  
18 second time?

19 A. I believe it was about the 28th or 29th of July.

20 Q. 28th or 29th of July?

21 A. Yes, sir.

22 Q. All right, sir. So where did you get the second  
23 projectile?

24 A. Out of the same post.

25 Q. All right, sir. And where did you find the second  
26 hull or spent cartridge?

27 A. It was in the, kind of in the driveway in the gravel,  
28 part of the driveway out there.

29 Q. Did it appear that this post and that general

1 vicinity had been used a good bit for target practice?

2 A. It was a good many holes in it; yes, sir.

3 Q. You didn't attempt to retrieve all of the projectiles  
4 out of that post?

5 A. That's the only two we got out of it.

6 Q. Did you attempt to retrieve others?

7 A. No, sir.

8 Q. Do you know why you just retrieved two and didn't  
9 retrieve the rest of them?

10 A. Well, some of them looked like .22 holes and looked  
11 like had been shot with a shotgun, and you know, just some of  
12 the holes were a lot smaller than others.

13 Q. So what you presumed to be .380 holes, that's what  
14 you tried to retrieve?

15 A. Yes, sir.

16 Q. You are familiar with firearms, aren't you, Mr.  
17 Thornburg?

18 A. With what?

19 Q. With firearms?

20 A. Yes, sir. Pretty good.

21 Q. A .38 pistol and a .380 pistol has approximately the  
22 same bullet, does it not?

23 A. It's pretty close; yes, sir.

24 Q. So there is no way you could look at a hole in a  
25 piece of wood and tell whether it was a .38 or a .380?

26 A. No, sir.

27 Q. All right, sir, now getting to your call about a  
28 stolen gun, how did you get that call?

29 A. The Sheriff's Office called the furniture store or

1 called on the radio, and somebody came in the store and told me  
2 that the office was trying to get up with me.

3 Q. All right, sir. Do you have a highway patrolman  
4 there named Taylor?

5 A. Yes, sir-- No, sir. Williams. James Taylor  
6 Williams.

7 Q. James Taylor Williams.

8 A. Yes, sir.

9 Q. Isn't he the one that told you about it, Mr.  
10 Thornburg?

11 A. No, sir. The office called.

12 Q. I thought you said an officer came in the store and  
13 told you?

14 A. It was an officer, but I don't remember who it was,  
15 but it wasn't James Williams.

16 Q. Okay. But there is an officer there in that vicinity  
17 by that name?

18 A. James Taylor Williams, yes, sir.

19 Q. He is a highway patrolman?

20 A. Yes, sir.

21 Q. All right, sir. So when you got the information,  
22 what did you do next?

23 A. I went to Angelica.

24 Q. All right, sir.

25 A. I got down there and Doyle was not there.

26 Q. All right, sir. This is Doyle Simpson?

27 A. Yes, sir.

28 Q. Let me ask you this, Mr. Thornburg. How far is it  
29 between Tardy Furniture and Angelica, the factory?

- 1           A.    I would say probably three quarters of a mile, maybe  
2 further.   I don't know.
- 3           Q.    A good long ways down there?
- 4           A.    Yes, sir.
- 5           Q.    What would it take you; five minutes to get down  
6 there?
- 7           A.    No, sir.
- 8           Q.    Ten minutes?
- 9           A.    No, sir.
- 10          Q.    How long would it take you?
- 11          A.    Probably about 3 or 4 minutes.
- 12          Q.    All right, sir.
- 13          A.    It would be depending on the traffic, you know,  
14 traffic in there.
- 15          Q.    Yes, sir. But it's three quarters of a mile or  
16 better, you say?
- 17          A.    Yes, sir.
- 18          Q.    Now when you got down to Angelica, you said Doyle  
19 Simpson was not there?
- 20          A.    No, sir.
- 21          Q.    What did you do next?
- 22          A.    We was in the office talking with the plant manager,  
23 and his brother came running by the front window.
- 24          Q.    Now would that have been Emmitt Simpson?
- 25          A.    Emmitt, yes, sir. And they said, "There goes his  
26 brother," so we went out and went around back where he went and  
27 talked to him and he told us--
- 28          Q.    --Well, do you know what he was running about?
- 29          A.    Uh-uh. I don't have any idea.

1 Q. This is in July and hot weather, wasn't it?

2 A. Yes, sir.

3 Q. What physical condition was he in? Was he hot,  
4 sweaty--

5 A. --yes, sir--

6 Q. --cool, calm?

7 A. He was, he was sweating; yes, sir.

8 Q. Was he nervous, upset?

9 A. He just told us that his brother thought he got his  
10 gun.

11 Q. Okay. All right, what else happened?

12 A. Well, we asked him did he. He said, "No, sir." He  
13 said, "My van is right around there. You can go look." We  
14 went and looked in the van and didn't find anything in it. We  
15 went back to the front office and Emmitt drove up-- I mean Doyle  
16 drove up.

17 Q. All right, sir. What kind of car does Doyle drive?

18 A. I don't really remember the brand name. It was an  
19 older model brown and tan car.

20 Q. All right, did it appear to be dirty and dusty?

21 A. Yes, sir.

22 Q. All right, sir. What did you do next?

23 A. We talked to him a few minutes, and he told us what  
24 he had done, that he parked his car down there and went inside,  
25 and about 10:20 he went back out and rolled the windows down  
26 to, so his car wouldn't be hot when he clocked out and left.  
27 He always clocked out at 10:30. He went back in the plant and  
28 took some orders from some of the workers in there to go get  
29 them lunches. When he got back to his car, he said the glove

1 compartment had been pried open and his gun gone.

2 Q. Did he say he notified somebody about the gun being  
3 missing before he went and picked up the lunches or after he  
4 picked up the lunches?

5 A. After.

6 Q. After he picked up the lunches. So about what time  
7 did you get the call that morning?

8 A. I'm going to say it was somewhere around 11:15 or  
9 11:30, somewhere along in there.

10 Q. All right, sir. To your knowledge has that gun been  
11 recovered?

12 A. To my knowledge it has not.

13 Q. Did you attempt to take any fingerprints out of the  
14 car itself?

15 A. No, sir. I did not.

16 Q. Do you know whether Simpson's car was locked or  
17 unlocked?

18 A. Well, he told me he went out and rolled the windows  
19 down where it wouldn't be so hot when he went back out. So  
20 with the windows down, I would say it would be unlocked.

21 Q. All right, sir. Now you didn't go out and look at  
22 the car itself?

23 A. When he got back down to the plant, I did. I went  
24 out and looked; yes, sir.

25 Q. What was the condition of the left window, the  
26 driver's door glass?

27 A. I don't remember anything about it.

28 Q. You don't remember whether it was broken out or taped  
29 over or anything like that?

1 A. No, sir.

2 BY MR. BILLY GILMORE: Court indulge me a  
3 moment.

4 Q. Mr. Thornburg, do you know when those projectiles  
5 were put into that post?

6 A. No, sir. I don't have any idea when they was put in  
7 there.

8 Q. You don't know whether it was put in there before  
9 July 16th or after July 16th of '96?

10 A. They was put in there before.

11 Q. How do you know that?

12 A. Well, it was old markings. If it had been after, it  
13 would have been-- where it went in would have been fresh.

14 Q. You don't know when they were put in there then?

15 A. No, sir. I don't.

16 BY MR. BILLY GILMORE: No further questions.

17 BY MR. HORAN: Nothing further from this  
18 witness.

19 BY THE COURT: Is he finally excused?

20 BY MR. HORAN: As far as the State is concerned,  
21 he is.

22 BY THE COURT: Mr. Thornburg, you may go back to  
23 Montgomery County.

24 WITNESS EXCUSED.

25 BY MR. HORAN: Steve Byrd.

26 BY THE COURT: Let me see y'all right here just  
27 a second.

28 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
29 THE JURY AS FOLLOWS:)



1           BY THE COURT: In relation to Exhibit 89 which  
2 is the box with the shoes in it, there has been no  
3 objection to the chain. Therefore, the sack is not  
4 relevant, and that's what has been marked. I want to  
5 mark the box and/or the shoes as the exhibit so that,  
6 there is no point in sending a bunch of paper back to  
7 the jury. Do y'all want that marked as a composite  
8 exhibit or individually? It would probably be better  
9 if it was individually, but I will do it any way you  
10 want to do it.

11           BY MR. HORAN: I think the shoes can probably  
12 be--

13           BY THE COURT: --They can go all go in the box.

14           BY MR. HORAN: The shoes can go back there.  
15 There is no relevance to the box.

16           BY THE COURT: Well, that's true. What do y'all  
17 want to do?

18           BY MR. HORAN: Send the shoes back there.

19           BY MR. EVANS: Well, they will wonder why they  
20 are not. Can the Court explain--

21           BY MR. JOHN GILMORE: We have no objection if  
22 y'all want to send the right shoe as--

23           BY THE COURT: --No, no. We are going to send  
24 both shoes. I will do that. Let's just send the box  
25 too. I mean you are right, but that won't make any  
26 difference.

27           BY MR. HORAN: Have something to keep them  
28 together in.

29           BY THE COURT: Yeah, it will. Mark the box as

1 the exhibit, and let's make that 89 A. All right.  
2 And look, we are going to do that -- how about let's  
3 do that and substitute-- why don't we substitute;  
4 rather than be 89 A, why don't we substitute that for  
5 89?

6 BY MR. HORAN: That is 89 right now, the sack.

7 BY THE COURT: The sack.

8 BY MR. HORAN: Just substitute the box for the  
9 sack.

10 BY THE COURT: Okay. And that will make that--

11 BY MR. HORAN: That will do.

12 BY THE COURT: Is that okay?

13 BY MR. HORAN: The box and shoes for the sack.

14 BY MR. EVANS: Just take this label off and put  
15 it on?

16 BY THE COURT: Let her make another one right  
17 quick.

18 END BENCH CONFERENCE.

19 (THE FILA TENNIS SHOE BOX WITH THE NEW SHOES WAS  
20 SUBSTITUTED FOR THE SACK WHICH ORIGINALLY CONTAINED  
21 THEM AND WAS REMARKED AS STATE'S EXHIBIT S-89 IN  
22 EVIDENCE.)

23 BY THE COURT: Steve Byrd.

24 STEVE BYRD,

25 a white male, having been called to testify as a witness by the  
26 State of Mississippi, having first been duly sworn, testified  
27 as follows, to-wit:

28 BY THE COURT: State your name for the record,  
29 please, sir.

1 BY THE WITNESS: My name is Steve Byrd.

2 BY MR. HORAN: Court will indulge me just for a  
3 moment.

4 DIRECT EXAMINATION BY MR. HORAN:

5 Q. State your name please again.

6 A. My name is Steve Byrd.

7 Q. How are you employed, Mr. Byrd?

8 A. I am employed by the Department of Public Safety as a  
9 forensic scientist specializing in firearms and tool mark  
10 examinations.

11 Q. And how long have you held that position with the  
12 Mississippi Crime Laboratory?

13 A. Over 15 years.

14 Q. And what are your duties and responsibilities at the  
15 Crime Lab in that regard?

16 A. I examine any type physical evidence that would be  
17 involving firearms type evidence, physical evidence. The most  
18 common things I examine are handguns, projectiles or bullets,  
19 if you will, fired cartridge cases, shotguns, long arms such as  
20 rifles, also cartridge cases that may have been fired from  
21 those. Routinely, I am requested to make microscopic  
22 examinations of test components to question components and  
23 render my opinion as to my findings.

24 Q. What training and expertise and education do you have  
25 that qualifies you to carry out those duties and respon-  
26 sibilities at the Mississippi Crime Lab?

27 A. I attended Hinds Junior College in Raymond,  
28 Mississippi. From there I transferred to the University of  
29 Southern Mississippi where I obtained a Bachelor of Science

1 Degree in chemistry. I was in employed in July of 1982 as a  
2 firearms examiner by the laboratory. The first year I was  
3 employed at the laboratory I underwent apprenticeship type  
4 training. In other words, I worked one on one with firearms  
5 examiners that were already employed and trained in the field.  
6 I have attended the Smith and Wesson and Ruger Armor School. I  
7 have attended the F.B.I. Academy in Quantico, Virginia, and  
8 several other training seminars that have been specifically for  
9 firearms examiners.

10 Q. I assume over the course of your employment with the  
11 Crime Lab that you have had exhibits come into your possession  
12 for the purpose of examining them to determine what projectiles  
13 were fired from what type of weapon and making, stating an  
14 opinion as to what, in fact, they are and what they were fired  
15 from?

16 A. Yes, sir.

17 Q. And approximately how many times have you testified  
18 in the courts in Mississippi?

19 A. I would say in excess of 150 occasions.

20 Q. And have you qualified as an expert on all those  
21 occasions?

22 A. Yes, sir.

23 BY MR. HORAN: Your Honor, at this time I will  
24 tender Mr. Byrd as an expert in the field of forensic  
25 sciences with the discipline in the area of firearms  
26 examination.

27 BY MR. JOHN GILMORE: No objection, Your Honor.

28 BY THE COURT: The Court accepts him as an  
29 expert in that field.

1 BY MR. HORAN:

2 Q. Mr. Byrd, I want to hand you three exhibits. I want  
3 you to inspect them and tell me whether or not you can identify  
4 those three exhibits, and please refer to the red exhibit  
5 number, please, sir.

6 A. (Witness looks at exhibits.) Yes, sir. I can.

7 Q. How can you identify those?

8 A. Each of these containers bears the Crime Laboratory  
9 case number, exhibit number, and my initials are on each of  
10 these items.

11 Q. Are they materially in the same condition today as  
12 when you came in contact with them?

13 A. Yes, sir, with the exception of the blue evidence  
14 tape that I placed on them and the red markers that have been  
15 placed on them by the Courts.

16 Q. And were they sealed when you retrieved them?

17 A. Yes, sir; they were.

18 Q. What examinations did you do to these exhibits? What  
19 was requested?

20 A. These three items, the white envelope, the brown  
21 manilla envelope, and the pill box which are labeled State  
22 Exhibits 86, 85 and 84, each bear a projectile, and I was  
23 requested to examine these and make microscopic comparisons of  
24 the three to determine whether or not they were fired from the  
25 same firearm.

26 Q. And what did you do in order to make those  
27 examinations? What steps did you take?

28 A. The first examination of the projectiles would be  
29 strictly a visual examination to classify the projectiles.

1 Class characteristics are common to a group of guns, and when a  
2 firearm is manufactured, the manufacturer of that firearm  
3 determines what the class characteristics will be.

4 The class characteristics of a firearm that has a  
5 rifle bore would be the caliber, the number of lands and  
6 grooves which is commonly referred to as the rifling, the  
7 direction that the rifling twists down the barrel of the  
8 firearm, and the widths of the lands and grooves. These  
9 examinations can be performed visually, and from that point  
10 they can be compared microscopically and compared to reference  
11 standards.

12 To actually identify projectiles as having been fired  
13 in the same firearm, you have to go a step beyond class  
14 characteristics to what are called individual characteristics.  
15 And they are, in fact, that individual to a given gun. And  
16 that's what allows an examiner to say projectiles were fired in  
17 the same firearm.

18 Now these microscopic comparisons are made under what  
19 is called a comparison microscope. Basically, all a comparison  
20 microscope is is two microscopes in one. You have two stages  
21 side by side, and the two fields of view are overlaid by what  
22 is called a comparison bridge. In other words, it combines  
23 them where you can look at two objects side by side. If you  
24 have looked through binoculars before, if you have the fields  
25 of view separated for each eyepiece too wide, you have two  
26 circles or two fields of view. When you bring them in to where  
27 they meet your center field of view, it turns into one circle.  
28 That is what an examiner sees when they view two objects side  
29 by side in a comparison microscope. And it's what allows me to

1 examine projectiles and any other items that I put under there  
2 side by side and compare common areas.

3 Q. You conducted all these tests, I assume, on all three  
4 of these projectiles in these exhibits?

5 A. Yes, sir; I did.

6 Q. Did you come to a conclusion as to any type of  
7 comparative analysis between these three exhibits?

8 A. Yes, sir. I did.

9 Q. Would you state for the benefit of the Court and the  
10 jury what your conclusion was?

11 A. These three projectiles were, in fact, fired from the  
12 same firearm.

13 Q. What is the basis of your opinion, Dr. Hayne? [sic]  
14 Was it based on the test that you conducted and your training  
15 and experience?

16 A. It's Mr. Byrd--

17 Q. --I mean Mr. Byrd--

18 A. --and what my opinion is based on is the training and  
19 expertise in the field and what was actually compared under the  
20 comparison microscope.

21 Q. First time I have ever done that, I believe.

22 A. Yes, sir.

23 (State's Counsel confer.)

24 BY MR. HORAN: I tender the witness, Your Honor.

25 BY MR. BILLY GILMORE: May I proceed, Your  
26 Honor?

27 CROSS-EXAMINATION BY MR. BILLY GILMORE:

28 Q. Mr. Byrd, do you know where these three projectiles  
29 came from other than the fact that some officer delivered them

1 to you?

2 A. Personally, no, sir.

3 Q. Okay. Now you are testifying about three  
4 projectiles. Now you are saying 84, 85 and 86. Now would you  
5 have an exhibit number on the box itself--

6 A. Yes, sir.

7 Q. --that you would refer to?

8 BY MR. BILLY GILMORE: May I approach the  
9 witness, Your Honor?

10 BY THE COURT: Yes.

11 BY MR. BILLY GILMORE:

12 Q. Mr. Byrd, if you would look at that, where we can  
13 coordinate which one now; number 84 is State's Exhibit. Which  
14 one of those exhibits is your number?

15 A. Would be Crime Laboratory Exhibit 67.

16 Q. 67. All right. And 85?

17 A. 85 is Crime Laboratory Exhibit 66.

18 Q. And 86?

19 A. Is Crime Laboratory Exhibit 61.

20 Q. 61. All right, sir. Do you have your notes with  
21 you, Mr. Byrd?

22 A. Yes, sir. I do.

23 Q. You testified that these three exhibits were fired  
24 from the same gun?

25 A. That's correct.

26 Q. How many projectiles did you test?

27 A. There were numerous projectiles or portions of  
28 projectiles submitted to the laboratory. I believe there were  
29 a total of, from what I, from the scene from what I understand



1 from my paperwork, I believe there were five separate exhibits.

2 Q. Five separate exhibits?

3 A. I believe that's correct.

4 Q. Okay, and you identified three. What about the other  
5 two?

6 A. The-- excuse me. One of these exhibits-- may I refer  
7 to my notes to get the right exhibit?

8 BY THE COURT: Sure.

9 BY THE WITNESS:

10 A. Exhibit 67, which is State's Exhibit 84, according to  
11 the evidence submission form, was retrieved from a mattress.  
12 Exhibits 61 and 66 to my knowledge were not submitted or  
13 recovered from that actual scene where this projectile was  
14 recovered from. The other projectiles that are mentioned in my  
15 report that originated from the same scene as Exhibit 64 would  
16 be different.

17 Q. So how many exhibits did you have total? Was it five  
18 or six or seven?

19 A. The two projectiles that are in State's Exhibit 85  
20 and State's Exhibit 86 did not, according to the paperwork, did  
21 not originate from the same scene that State's Exhibit 84 came  
22 from which is the mattress. I examined four other portions of  
23 projectiles that were recovered from that area.

24 Q. So that would be a total of what, seven projectiles  
25 you examined?

26 A. That's correct, from these two scenes.

27 Q. All right, sir. And I believe what is referred to as  
28 your exhibit 8, 23 and 33; is that correct? Do you have those  
29 three exhibits?

1 A. They are not up here, but yes, sir--

2 Q. --No, sir, I mean--

3 A. --those were other projectiles.

4 Q. --did you have those other exhibits?

5 A. Yes, sir; I did.

6 Q. And what was your conclusion on those exhibits?

7 A. Well, actually I had exhibits that were submitted to  
8 me-- as far as projectiles, I had exhibits; this is Crime  
9 Laboratory Exhibits. I had Exhibits 8, 23, 31, 32 and 33 that  
10 to my knowledge and from what I understand, originated from the  
11 same location as State's Exhibit 84, which is Crime Laboratory  
12 Exhibit 67. So I had a total of six.

13 Q. All right, sir.

14 A. Either total projectiles or portions of projectiles.

15 Q. Do you know if those were recovered from the crime  
16 scene?

17 A. To my knowledge and according to the evidence  
18 submission form, yes, sir.

19 Q. All right. What was your conclusion on those three  
20 exhibits?

21 A. Which exhibits?

22 Q. The 8, 23 and 33?

23 A. 8, 23 and 33 bear similar class characteristics to  
24 all of these projectiles. In other words, they could have  
25 originated from this gun or another gun similar to this one.

26 BY MR. BILLY GILMORE: Would the Court indulge  
27 me?

28 (Defense Counsel confer.)

29 BY MR. BILLY GILMORE: Tender the witness, Your

1 Honor.

2 REDIRECT EXAMINATION BY MR. HORAN:

3 Q. Mr. Byrd, I want to hand you what has been marked for  
4 identification purposes as State's Exhibit 91 and 90. Can you  
5 tell me whether or not these two items have ever come into your  
6 possession?

7 A. Yes, sir. They have.

8 Q. And from whom did you receive those? Do you  
9 recognize anybody's handwriting on it?

10 A. They were submitted by the pathologist office.

11 Q. That is Dr. Hayne's office?

12 A. That's correct.

13 Q. You are Mr. Byrd. Did you conduct an examination on  
14 those two projectiles?

15 A. Yes, sir. I did.

16 Q. And for what, what type of examination did you  
17 conduct on those?

18 A. I did the same visual and microscopic examinations  
19 that I did to these previous three examinations or items that I  
20 described earlier.

21 Q. Did you come to a conclusion about those two  
22 particular projectiles, and did you make any findings as to  
23 those particular projectiles?

24 A. Yes, sir.

25 Q. Would you give the Court and the jury the benefit of  
26 your findings, please, sir?

27 A. These two projectiles bear similarities to the class  
28 characteristics of these three projectiles.

29 Q. Anything else on top of that? Did you make any other

1 findings?

2 A. These two projectiles, no, sir.

3 BY MR. HORAN: I offer those into evidence at  
4 this time, Your Honor.

5 BY THE COURT: Objection?

6 BY MR. BILLY GILMORE: Your Honor, I'm going to  
7 object to it. I don't think the proper predicate has  
8 been laid involving those two pieces of evidence.

9 BY THE COURT: Overruled. They are admitted.

10 (EACH OF THE TWO EVIDENCE BAGS CONTAINING A  
11 PROJECTILE IN A TUBE PREVIOUSLY MARKED AS STATE'S  
12 EXHIBITS S-90 AND S-91 FOR IDENTIFICATION WERE NOW  
13 RECEIVED IN EVIDENCE.)

14 BY MR. HORAN: I have another question of the  
15 witness, Your Honor.

16 BY THE COURT: Okay.

17 BY MR. HORAN:

18 Q. Mr. Byrd, do you have an opinion as to what type of  
19 weapon fired those projectiles?

20 A. All these projectiles are .380 auto caliber. In  
21 other words, that's a class characteristics of the projectile  
22 themselves, so the only type of firearm that I would be  
23 familiar with that would fire these would either be a, it would  
24 be some type pistol, either a semi-automatic or a Derringer.

25 BY MR. HORAN: That's all I have, Your Honor.

26 BY THE COURT: Okay. Is he finally excused?

27 BY MR. HORAN: He is.

28 BY THE COURT: Mr. Byrd, you are free to go.

29 WITNESS EXCUSED.

1 BY THE COURT: Ladies and gentlemen, let's take  
2 a break.

3 (FOLLOWING THE AFTERNOON RECESS ON OCTOBER 15,  
4 1997, TRIAL RESUMED IN OPEN COURT WITH THE DEFENDANT  
5 PRESENT AND WITH THE JURY PRESENT FOR THE FOLLOWING:)

6 BY THE COURT: Who do you have next, Mr. Evans?

7 BY MR. EVANS: Doyle Simpson, Your Honor.

8 BY THE COURT: Mr. Simpson, have you been  
9 sworn?

10 BY THE WITNESS: Yes, sir.

11 BY THE COURT: All right, have a seat up here,  
12 please.

13 DOYLE SIMPSON,  
14 a black male, having been called to testify as a witness by the  
15 State of Mississippi, having been previously sworn, testified  
16 as follows, to-wit:

17 BY MR. EVANS: May I proceed, Your Honor?

18 BY THE COURT: You may.

19 DIRECT EXAMINATION BY MR. EVANS:

20 Q. If you would, state your full name.

21 A. Doyle Simpson.

22 Q. And where do you live?

23 A. 121 Poor House Road.

24 Q. In what city?

25 A. Winona.

26 Q. Doyle, where do you work?

27 A. At Angelica.

28 Q. How long have you worked at Angelica?

29 A. About four years.

1 Q. Would you explain to the jury what Angelica is?

2 A. That's where they make uniforms for the hospitals and  
3 gowns.

4 Q. Doyle, I want to direct your attention back to July  
5 the 16th of 1996, the day the people were killed at Tardy  
6 Furniture. Do you remember that day?

7 A. Yes, sir.

8 Q. What time did you go to work that day?

9 A. About 6:15.

10 Q. And how did you get to work?

11 A. In my car.

12 Q. And what kind of car is that?

13 A. Pontiac Phoenix.

14 Q. Did you have any type of weapon in your car when you  
15 went to work that day?

16 A. Yes, I did.

17 Q. And what was that?

18 A. A .380 pistol.

19 Q. And is that a .380 automatic?

20 A. Yeah, automatic, yeah, with a clip, automatic.

21 Q. Did it have bullets in it?

22 A. Yes, sir.

23 Q. Would you describe the bullets that were in it?

24 A. Well, they had two different kinds.

25 Q. All right. And what do you mean by two different  
26 kinds? What did they look like?

27 A. Well, I had the regular kind and I had some with,  
28 like silver like.

29 Q. Okay, are you talking about different colored hulls?

1 A. Different colored hulls, right.

2 Q. Two different colors?

3 A. Yes, sir.

4 Q. Where was this weapon in your vehicle when you went  
5 to work at 6:15?

6 A. In my glove compartment.

7 Q. Tell the ladies and gentlemen of the jury what you  
8 did when you went to work that day. To start with, where did  
9 you park your vehicle?

10 A. I park, always park on the front right next to the  
11 door.

12 Q. At any time that morning did you go out to your  
13 vehicle for anything?

14 A. Yes.

15 Q. About what time?

16 A. About right before break.

17 Q. And so that they will know when we are talking about,  
18 what time of day is that?

19 A. Oh, that is right about 9:00, about 9:15.

20 Q. Did you go back to your car later for anything?

21 A. Yes, sir.

22 Q. What time was that?

23 A. That was about 10:00, about 10:20.

24 Q. Was that the first time that you noticed anything  
25 about your car being unusual?

26 A. No, sir. I didn't notice nothing.

27 Q. You still didn't notice anything at that time?

28 A. No, sir.

29 Q. All right, what was the first time that you noticed

1 anything unusual about your vehicle?

2 A. After I got ready to leave to go get lunch.

3 Q. And what time were you going to go get lunch?

4 A. I was going about a quarter to 11:00 or something  
5 like that.

6 Q. About a quarter to 11:00?

7 A. Yes, sir, something like that, about twenty or  
8 quarter till.

9 Q. Where were you going to get lunch?

10 A. At the chicken place and at the City Cafe.

11 Q. Were you picking up lunch for other people besides  
12 yourself?

13 A. Yeah, for other people, not for myself; for other  
14 peoples.

15 Q. Okay. When you got in your vehicle to go get lunch,  
16 what did you notice?

17 A. I noticed, I noticed the pocket. When I closed my  
18 door, I noticed the pocket was open.

19 Q. All right, now the pocket; you are talking about the  
20 glove compartment?

21 A. Glove compartment, right.

22 Q. Was it broken open?

23 A. Yes, sir.

24 Q. Was there anything missing?

25 A. The gun was gone.

26 Q. Doyle, do you know Curtis Flowers?

27 A. Yes, sir.

28 Q. How do you know him?

29 A. He is my nephew.



1 Q. All right, did Curtis know that gun was in your car?

2 A. Yes, sir.

3 Q. Did you talk with anybody about anybody being seen  
4 around your car that morning after your car was broken into?

5 A. Did I talk to anybody when? Before?

6 Q. After you found out that your car was broken into,  
7 did you talk to anybody that worked there at Angelica?

8 A. Yes, sir. I talked to-- I went and asked somebody  
9 did they see anybody break in my car.

10 Q. And who did you ask?

11 A. I asked my brother and a few more people working next  
12 door.

13 Q. And is that Emmitt, your brother?

14 A. Yes, sir.

15 Q. Did he see anybody around your car?

16 A. They said they didn't see nobody.

17 Q. Did you see anybody that did see somebody around your  
18 car?

19 A. The next day I-- did I-- say that again now? Excuse  
20 me.

21 Q. Did you talk to Katherine Snow that day?

22 A. No, sir. I did not.

23 Q. When did you talk to her?

24 A. The next day. I went to work.

25 Q. Did she describe the person that she saw around your  
26 car?

27 A. Yes, sir.

28 Q. Did you know who she was describing?

29 BY MR. BILLY GILMORE: I object, Your Honor. I

1 don't see how she could go into any detail to  
2 describe a person.

3 BY MR. EVANS: I am waiting to hear what the  
4 objection, what grounds it's on.

5 BY THE COURT: Well, it would be hearsay for  
6 one.

7 BY MR. EVANS: Well, that part is in, Your  
8 Honor. All I asked is if he could tell from the  
9 description who the person was.

10 BY THE COURT: Overruled.

11 BY MR. EVANS:

12 Q. Could you tell--

13 BY THE COURT: --Wait a minute. He probably  
14 ought to define how he can do that. I'm sorry, Mr.  
15 Evans. He can answer that question first, and then  
16 he probably needs to explain that answer.

17 BY MR. EVANS: Yes, sir.

18 BY MR. EVANS:

19 Q. All right, do you remember what I was asking you,  
20 Doyle? Could you, did you know who she was talking about from  
21 the description she gave you?

22 A. Yes, sir.

23 Q. Who was she talking about?

24 A. She was talking about Curtis.

25 Q. And how did you know that she was talking about  
26 Curtis?

27 A. Because she said he was-- short pants on and had a  
28 white cap, and he was built short and had short pants on, had  
29 short pants on, tennis shoes, and a white T-shirt and a cap.

1 Q. And why did that make you know that Curtis is the one  
2 that broke in your vehicle or was at your vehicle?

3 A. That's my vehicle.

4 Q. All right. How did her description tell you that  
5 that is who it was?

6 A. Because when I got to the police station, he had on  
7 something kind of like that.

8 BY MR. BILLY GILMORE: Your Honor, I'm going to  
9 object then if he identified by something he saw  
10 later.

11 BY THE COURT: Overruled.

12 BY MR. EVANS:

13 Q. Doyle, did you ever carry any officers anywhere that  
14 you had shot this gun before?

15 A. Yes, sir. I did.

16 Q. Where did you carry them to?

17 A. To my Mama's house.

18 Q. And where does she live?

19 A. Poor House Road, same address.

20 Q. Same address that you live at?

21 A. Yes, sir.

22 Q. And where had you shot that gun before? Can you  
23 describe the area for the jury so that they will know what you  
24 are talking about?

25 A. In the back, in the back yard.

26 Q. All right.

27 A. We had a post back there to set bottles and cans in.  
28 We shooting in, shooting in the back in there behind the  
29 house.

1 Q. All right. And what weapon were you shooting back  
2 there behind the house?

3 A. .22 and that .380 and some, probably some more, some  
4 more .22's.

5 Q. Just .22's and that .380; is that right?

6 A. Right.

7 Q. So that was the only .380 that was fired back there?

8 A. As far as I know; yes, sir.

9 Q. And this is your and your mother's house; is that  
10 right?

11 A. Yes, sir.

12 Q. And were you present when the officers recovered or  
13 dug some bullets out of this post?

14 A. Yes, sir. I was.

15 Q. And was this the same post that you had fired that  
16 gun at?

17 A. Yes, sir.

18 Q. Do you remember about what time that morning it was  
19 that you first reported to somebody that your gun was stolen  
20 out of your car?

21 A. No, sir. I couldn't. It was between 11:00-- it was  
22 between 10:30 and 11 o'clock.

23 Q. 10:30 and 11:00?

24 A. Yes, sir.

25 BY MR. EVANS: May I have the Court's indulgence  
26 to look at something over here, Your Honor?

27 Q. Doyle, I want to show you Exhibit 54 and ask you to  
28 look at this if you would?

29 A. (Hands photograph to witness.)

1 Q. Can you identify what that exhibit is?

2 A. That's my car.

3 Q. Is that car the same car that you have told the  
4 ladies and gentlemen about your .380 being stolen out of the  
5 glove compartment on July the 16th?

6 A. Yes, sir; it is.

7 BY MR. EVANS: Your Honor, I offer this exhibit  
8 54 into evidence.

9 BY MR. BILLY GILMORE: No objection.

10 BY THE COURT: Okay. Let it be admitted.

11 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S EXHIBIT  
12 S-54 FOR IDENTIFICATION WAS NOW RECEIVED IN  
13 EVIDENCE.)

14 BY MR. EVANS: I will tender the witness, Your  
15 Honor.

16 (Confers with Mr. Horan briefly.)

17 BY MR. EVANS: Yeah, one more question, Your  
18 Honor.

19 CONTINUING DIRECT BY MR. EVANS:

20 Q. What size shoes do you wear, Doyle?

21 A. I wear a 12.

22 BY MR. EVANS: Nothing further.

23 BY MR. BILLY GILMORE: May I proceed, Your  
24 Honor?

25 BY THE COURT: Uh-hum.

26 CROSS-EXAMINATION BY MR. GILMORE:

27 Q. Doyle, when did you actually last see the gun?

28 A. That day, that evening, the day before.

29 Q. The day before?

- 1 A. (Witness nods his head.)
- 2 Q. You might have to speak a little louder.
- 3 A. Oh. The day before.
- 4 Q. The day before. What time the day before?
- 5 A. That was that evening.
- 6 Q. All right, how do you remember seeing the gun the day
- 7 before?
- 8 A. I put it in the car.
- 9 Q. Where had it been?
- 10 A. In the house.
- 11 Q. And how long had it been in the house?
- 12 A. Since the weekend, about a day or two.
- 13 Q. All right, now are you saying the house, was that
- 14 your girlfriend's house--
- 15 A. No. My mom's house, yes, sir.
- 16 Q. Okay. All right. Did you stay at your mother's
- 17 house that night?
- 18 A. No, I did not.
- 19 Q. Where did you stay?
- 20 A. I stayed with my girlfriend.
- 21 Q. And where does she live?
- 22 A. She stay across town on South-- North Union.
- 23 Q. And what is her name?
- 24 A. Denise. Kendall.
- 25 Q. Denise?
- 26 A. Denise Kendall.
- 27 Q. And where did you park the car that night?
- 28 A. At my mom's house. I never left it--
- 29 Q. --So you parked the car at your mother's house. How

1 do you get to your girlfriend's house?

2 A. Oh, she picks me up every night.

3 Q. She picks you up?

4 A. Every night.

5 Q. Okay, so you leave your car at your mother's house?

6 A. Yes, sir.

7 Q. Okay. So the car stayed at your mother's, and that  
8 is out in the rural area of Montgomery County?

9 A. Out there on the Poor House Road; yes, sir.

10 Q. How many miles is that from Winona?

11 A. About two or three.

12 Q. Two or three miles?

13 A. Yes, sir, from town, from town.

14 Q. Okay, does she live on a blacktop road--

15 A. --dirt road--

16 Q. --dirt road, gravel road? What kind of road?

17 A. Gravel road.

18 Q. A lot of dust out there?

19 A. Yes, sir.

20 Q. Now you went out on break, I believe you said at 9:15  
21 that morning?

22 A. Went out there and got my breakfast out; yes, sir.

23 Q. Oh, you carried your breakfast with you?

24 A. I carry bring my breakfast, bring my breakfast every  
25 morning. I don't miss a morning.

26 Q. Do you lock your car?

27 A. No, sir.

28 Q. Now tell the jury whether or not the right hand  
29 passenger door will open or not? At that time would it open or

1 not?

2 A. No, sir. It wasn't no doors open.

3 Q. No, I mean would it open, physically open, or was it  
4 jammed where you couldn't open it?

5 A. It wasn't jammed. All you have got to do is pick up  
6 on it; that's all.

7 Q. Okay, but it is hard to open?

8 A. Well, the driver's, I mean on the driver's side is.

9 Q. No, I'm talking about on the passenger side.

10 A. Passenger side, no, sir. It wasn't that hard to  
11 open, no, sir.

12 Q. Okay, but you have to pick up on it to open too?

13 A. A little bit, yes, sir.

14 Q. Describe this car to us, Doyle. What kind is it?

15 A. It's 1980 Pontiac Phoenix.

16 Q. Is that a compact car or a large car?

17 A. That's a Photo L J. I don't know. It's a compact, I  
18 guess.

19 Q. Is it considered a small compact car?

20 A. Small car, small, yes, sir.

21 Q. What color is it?

22 A. Brown.

23 Q. Is it light brown or dark brown?

24 A. Dark.

25 Q. Dark brown?

26 A. About, a little bit darker, about as dark as that you  
27 are standing.

28 Q. All right, so that is not real dark then?

29 A. Not quite real dark.



1           Q.    Can you describe the rear of the car?  What does the  
2   taillights look like in the back?  Are they one here and one  
3   here, or are they all the way across, or are they staggered  
4   across?

5           A.    They got a part; they got a section in it on this  
6   side and this side.

7           Q.    Okay.  You are sure they are not all the way across?

8           A.    Sir?

9           Q.    You are sure those lights don't go all the way  
10  across?

11          A.    No, sir.  They got a tag in the middle of it.

12          Q.    Got a tag in the middle?

13          A.    Yes, sir.

14          Q.    But otherwise, you have got lights on both sides of  
15  the tag?

16          A.    Yes, sir.

17          Q.    You have got one little spot that doesn't go--

18          A.    --Yeah, lights right there by the tag.

19          Q.    But otherwise, lights are all the way across on both  
20  sides of the tag?

21          A.    Yes, got lights--

22          Q.    --except the tag itself?

23          A.    Except the tag.

24          Q.    And it has got a light over it?

25          A.    It has got lights on this and that one.  (Witness  
26  demonstrates with his hands.)

27          Q.    Now getting back to, you went out there at 9:15 to  
28  get your breakfast out of your car?

29          A.    Yes, sir.

1 Q. Where did you have your breakfast? Front seat, back  
2 seat?

3 A. Right on the front seat by, next to me.

4 Q. Next to the driver's side?

5 A. Yes, sir.

6 Q. Did you retrieve it from the driver's side or the  
7 passenger side?

8 A. Driver's.

9 Q. Driver's side. All right, at that time was the glove  
10 box open?

11 A. I never noticed it.

12 Q. You didn't notice it?

13 A. No, sir.

14 Q. I believe you said you went out there again at about  
15 10:20?

16 A. 10:20, yes, sir.

17 Q. That's when you let the window down?

18 A. Window down; yes, sir.

19 Q. Could you let all the windows down on your car?

20 A. Yes, sir.

21 Q. Any of them broken out?

22 A. Sir?

23 Q. Is any of the windows broken out?

24 A. No, one of them, it was -- on the driver's side, it  
25 wasn't. I say it had a stick in it. It was broke. It had a  
26 stick in it. You have to pull the stick out to let it down;  
27 yes, sir.

28 Q. All right. Okay, sometimes do you tape that over?

29 A. Yeah, sometimes I tape it over; yes, sir.

- 1 Q. What about that day, was it--
- 2 A. No, sir. It wasn't.
- 3 Q. Did you have the stick in it where you could let it
- 4 down manually?
- 5 A. Yes, sir.
- 6 Q. But they normally have electric windows?
- 7 A. Yeah, it's power, they are power windows, but it is
- 8 just broke.
- 9 Q. Okay, now. You said you went back out there, let's
- 10 see, at approximately what, 10:30?
- 11 A. After I-- about a quarter to 11:00.
- 12 Q. You went back out there at about a quarter to 11:00?
- 13 A. Yeah, something like that.
- 14 Q. So you went through the plant and picked up lunch
- 15 orders?
- 16 A. Picked up the lunch order.
- 17 Q. Is that something you do every day?
- 18 A. Picked up the lunch order, yes, sir.
- 19 Q. All right, when you picked up the lunch orders, do
- 20 you remember how many lunch orders you took that day?
- 21 A. No, sir. I cannot remember.
- 22 Q. Now do you know whether you walked to get the lunches
- 23 or you went in your car?
- 24 A. I went in my car to get the lunches.
- 25 Q. Went in your car, okay. So when you came back out to
- 26 the car, what happened then?
- 27 A. I sat down. I closed my door and I sat down. That's
- 28 what I realized the pocket was open.
- 29 Q. The pocket was open?

1 A. Yes, sir.

2 Q. Was it standing open, or was the door flopped down  
3 or--

4 A. No, sir. It was cracked about that much  
5 (Indicating.)

6 Q. Now do you remember me talking to you about a week  
7 ago?

8 A. Yes, sir.

9 Q. Do you remember what you told me then?

10 A. Yes, sir-- no, uh, sir?

11 Q. Do you remember what you told me about the pocket  
12 then?

13 A. Yes, sir. I said it was open. I said it have a  
14 crack in it.

15 Q. Do you remember telling me when you got in and shut  
16 the door, the pocket fell open?

17 A. I said it might have well. Yes, sir; I didn't say it  
18 fell open. I said it might have fell open when I closed the  
19 door. That's when I noticed it was open.

20 Q. Okay, so you don't know whether it was closed or not  
21 when you got in the car?

22 A. No, sir. I didn't notice it until I sat down in the  
23 car and got ready to take off. That's when I noticed it.

24 Q. All right. Now did you go on and get the lunches  
25 before you inquired about the gun?

26 A. Yes, sir. Sir?

27 Q. Did you go on--

28 A. --no, sir--

29 Q. --get the lunches first?

- 1           A.    I went next door and asked anybody had broke in my  
2 car; they see anybody by my car that morning.
- 3           Q.    Who did you talk to?
- 4           A.    Emmit and four more, three more peoples that morning.
- 5           Q.    All right, did you talk to Ray Weems?
- 6           A.    No, sir.
- 7           Q.    Did you see him there?
- 8           A.    Where?
- 9           Q.    In that vicinity.
- 10          A.    No, sir. I did not.
- 11          Q.    Does he work next door?
- 12          A.    No, sir. He do not.
- 13          Q.    Did he back then?
- 14          A.    No, sir.
- 15          Q.    So you saw Emmit, your brother?
- 16          A.    I saw Emmit and Aaron and two more peoples.
- 17          Q.    Where were they?
- 18          A.    They, he work next door.
- 19          Q.    Well, I mean were they out in the parking area?
- 20          A.    No, sir. They was in the plant. They was in the  
21 plant.
- 22          Q.    Okay. Did you accuse your brother of getting your  
23 gun?
- 24          A.    No, sir. I did not.
- 25          Q.    You didn't accuse him. Did anybody see anybody  
26 around your car as far as you could find out at that time?
- 27          A.    No, sir. I asked them, and they said they didn't see  
28 nobody at it.
- 29          Q.    Did you go on then and get the lunches?

- 1 A. Yes, sir; I sure did.
- 2 Q. Where did you go?
- 3 A. I went to the chicken house and to the City Cafe.
- 4 Q. The chicken house, is that Fuzzy's?
- 5 A. That is Fuzzy's Chicken; yes, sir.
- 6 Q. And how long were you gone?
- 7 A. Oh, about something after 11:00.
- 8 Q. Something after 11:00?
- 9 A. When I came back.
- 10 Q. Do they prepare the lunches when you get there, or do
- 11 you call in?
- 12 A. Well, some of them call in, and some of them, some of
- 13 them had called in, and some I have to wait on them.
- 14 Q. Okay. Do you remember telling anybody at Fuzzy's
- 15 that your gun was missing?
- 16 A. Yes, sir; I sure did.
- 17 Q. Who did you tell?
- 18 A. I told one of my classmates.
- 19 Q. Who was that?
- 20 A. Dorothy Flowers.
- 21 Q. Dorothy?
- 22 A. --not Dorothy. Doris.
- 23 Q. Doris Flowers?
- 24 A. Let me see; I think that's her name. Doris Flowers.
- 25 Q. She work there?
- 26 A. She work there. She was working at Fuzzy's. Yes,
- 27 sir.
- 28 Q. Works at Fuzzy's, okay. Now you talked to Katherine
- 29 Snow the next day, I understand?

1 A. Yes, sir.

2 Q. And she said the person she saw out had on short  
3 pants, white cap, tennis shoes and white T-shirt?

4 A. Yes, sir.

5 Q. You are absolutely sure about that?

6 A. I think that's what she tell; I recall it. I know  
7 she said something kind of like that; yes, sir, if I can  
8 recall.

9 Q. All right, did you see Curtis later on in that day?

10 A. I saw him at the police station.

11 Q. Was he dressed the same way?

12 A. Kind of like that, yes, sir.

13 Q. Did he have on--

14 A. Short pants.

15 Q. Short pants?

16 A. Yes, sir.

17 Q. What color were they?

18 A. Blue.

19 Q. Blue. Did he have on a cap?

20 A. Yes, sir.

21 Q. Did he have on white T-shirt?

22 A. I think so. If I recall, yes, sir; I think so; yes,  
23 sir.

24 Q. And he had on tennis shoes?

25 A. Yes, sir.

26 Q. Do you know what kind they were?

27 A. No, sir. I didn't notice. I didn't pay no  
28 attention. No, sir.

29 Q. Okay. Do you wear tennis shoes?

- 1           A.    Yes, sir.
- 2           Q.    Have you ever worn Fila tennis shoes?
- 3           A.    Not lately.
- 4           Q.    Well, I mean have you worn them?
- 5           A.    I have-- sir?
- 6           Q.    Have you ever worn Fila tennis shoes?
- 7           A.    Yes, I had some way back. They been gone.
- 8           Q.    Been gone?
- 9           A.    Yes, sir.
- 10          Q.    How far back?
- 11          A.    Oh, a while back.
- 12          Q.    A while back; a year ago?
- 13          A.    Sir?
- 14          Q.    A year ago?
- 15          A.    Been longer than that.
- 16          Q.    Year and a half?
- 17          A.    Maybe two years, three years, four years.
- 18          Q.    Okay. Now you said that you had a post or something
- 19    behind your mother's house that y'all put your targets on?
- 20          A.    Yes, sir. We sure did.
- 21          Q.    Do other people use that for target practice?
- 22          A.    No, sir. She don't allow no, everybody, just
- 23    somebody in the family, something like that.
- 24          Q.    Well, have you had other friends over to target
- 25    practice when you were target practicing?
- 26          A.    No, sir. Nothing but my cousin and them.
- 27          Q.    Well, who is your cousin then?
- 28          A.    Like up the road and down the road. David Weems and
- 29    them, my brother and them.



1 Q. David Weems?

2 A. David Weems, my brother, somebody like that.

3 Q. Who is your brother?

4 A. Sidney.

5 Q. Who?

6 A. Sidney, Steve.

7 Q. Sidney Steed is your brother?

8 A. No, Sidney and Steve, they are my brothers. They are  
9 my brothers.

10 Q. Okay, so they have target practiced there too?

11 A. Oh, yeah. They be shooting too.

12 Q. Do you know what type pistols they shoot?

13 A. They don't have no pistols.

14 Q. What do they shoot?

15 A. Shoot a rifle.

16 Q. Rifles?

17 A. Yes, sir; a rifle, shotgun.

18 Q. Have they ever been down there and used your gun  
19 target practicing?

20 A. No, sir. They sho' haven't.

21 Q. You are the only one used yours?

22 A. Yes, sir. They had, they had shot it now. They had  
23 shot it.

24 Q. They had shot your gun?

25 A. Before, yes, sir. I know Sidney had.

26 Q. Are you saying Sidney?

27 A. Yes, sir. He had shot it before.

28 Q. Did he have the gun some himself?

29 A. No, sir. No, sir. No, sir.

1 Q. You just let him use it when he would go target  
2 practicing--

3 A. Yeah, when we be shooting.

4 Q. --and bring it back?

5 A. No, we didn't go no further. We just be in the back  
6 yard.

7 Q. All right, so your brother Sidney shot your gun in  
8 the back yard?

9 A. Before, yes, sir. He had shot it before.

10 Q. Where did you get this gun, Doyle?

11 A. (No response).

12 Q. Where did you get this gun?

13 A. I got it from, uh, from uh, Ike. I can't call--

14 Q. --Is it Ike Williams?

15 A. I can't call his real name.

16 Q. Is that Ike Williams?

17 A. Yes, sir.

18 Q. When this investigation started, did the police pick  
19 you up as a suspect?

20 A. Yes, sir. They sho' did.

21 Q. Did they ask about your gun at that time?

22 A. Yes, sir. They sho' did.

23 Q. Did they inquire as to where you purchased the gun?

24 A. Yes, sir. They sho' did.

25 Q. What did you tell them?

26 A. I told them, I told them that I had got it from New  
27 Orleans.

28 Q. Got it from New Orleans?

29 A. Yes, sir.

1 Q. And did you tell them who you got it from in New  
2 Orleans?

3 A. Yes, sir. I did.

4 Q. Who did you tell them?

5 A. I said my brother.

6 Q. Your brother?

7 A. Yes, sir.

8 Q. Now where does Ike Williams live?

9 A. In Winona.

10 Q. In Winona?

11 A. Yes, sir.

12 Q. Now didn't you go so far as to call your brother in  
13 case somebody contacted him to tell them that, in fact, you had  
14 bought the gun from him?

15 A. Yes, sir.

16 Q. You did do that?

17 A. (Witness nods his head.)

18 Q. You told the police this, didn't you?

19 A. Yes, sir.

20 Q. You lied to them?

21 A. Yes, sir.

22 Q. Doyle, isn't it true that you were uptown around  
23 9:00, 9:30, 10 o'clock that morning?

24 A. No, sir.

25 Q. You deny that?

26 A. Yes, sir.

27 Q. So if anybody saw you up there in town between 9 and  
28 10 o'clock, they would be lying?

29 A. Yes, sir. They sho' would.

- 1 Q. You are telling the truth?
- 2 A. I am telling the truth.
- 3 Q. All right. And I'm talking about on July the 16th--
- 4 A. --July the 16th.
- 5 Q. 1996?
- 6 A. That's right.
- 7 Q. You say you were not uptown at all between 9:00 and
- 8 10:00 or 10:30?
- 9 A. I never left the plant.
- 10 Q. Never left the plant?
- 11 A. Never left the plant.
- 12 Q. Did you loan anybody your car?
- 13 A. No, sir. I never loaned nobody my car.
- 14 Q. Now you said you reported the gun stolen between
- 15 10:30 and 11:00?
- 16 A. (No audible response).
- 17 Q. You have to answer with your mouth?
- 18 A. Yes, sir. Yes, sir.
- 19 Q. Okay. Now you went to Fuzzy's first?
- 20 A. Yes, sir.
- 21 Q. And you told somebody over there?
- 22 A. Yes, sir.
- 23 Q. All right. Did you personally report the gun to the
- 24 police?
- 25 A. No, sir. I did not.
- 26 Q. Do you know who did?
- 27 A. No, sir. I do not.
- 28 Q. So the next thing you know, the police were down
- 29 there inquiring about the gun although you had not reported

1 it?

2 A. They was down there when I got back from picking up  
3 the lunches; yes, sir.

4 Q. So they had found out your gun was missing before it  
5 was even reported by you to any authorities?

6 A. Well, I had told somebody. I had told, I had told it  
7 to my super-- what you call it, superintendent -- I mean  
8 supervisor.

9 Q. But you don't know whether she called it in or not?

10 A. No, I don't know whether she called or not, no, sir.

11 Q. But you do know the police got down there before you  
12 reported it?

13 A. Yes, sir. I guess; yes, sir.

14 Q. And that's when you told them the yarn about buying  
15 the gun from your uncle in New Orleans?

16 A. No, sir. I didn't tell them that then.

17 Q. When did you tell them that?

18 A. That was later on, in investigating--

19 Q. --that's when they picked you up as a suspect, wasn't  
20 it?

21 A. No, sir. They didn't pick me up as no -- they picked  
22 me up for questioning.

23 Q. When was that?

24 A. That was the same day.

25 Q. Picked you up that afternoon, didn't they?

26 A. Yeah, at the school house. And asked me, asked me  
27 about it.

28 Q. All right, did they carry you up to the police  
29 station?

1 A. Yes, sir.

2 Q. Did they fingerprint you?

3 A. Yes, sir.

4 Q. Take your picture?

5 A. Not that -- later on.

6 Q. Later on they took your picture?

7 A. About two or three weeks later.

8 Q. Two or three weeks later. But they did fingerprint  
9 you that first day?

10 A. I can't remember. I don't know whether it was the  
11 first day or second day.

12 Q. Okay, do you remember what officer talked to you?

13 A. Uh, officer, uh, well, the first two officers was  
14 Officer Thornburg and the state trooper.

15 Q. Was he the one that came down to Angelica?

16 A. Yes, sir.

17 Q. All right.

18 A. And, uh, and the DA, John Johnson.

19 Q. John Johnson, the investigator with the District  
20 Attorney's Office?

21 A. Yes, sir.

22 Q. When did he talk to you?

23 A. That day we came down there.

24 Q. That afternoon?

25 A. Yes, sir.

26 Q. Did he fingerprint you or did the deputy or one of  
27 the policemen?

28 A. I'm trying to, I can't remember who fingerprint me  
29 up.

1 Q. All right. Did on other occasions, did they take you  
2 up to the police department or question you?

3 A. No, sir. Nothing but--

4 Q. --That was the only time?

5 A. No--sir?

6 Q. Was that the only time they talked to you?

7 A. Oh, no, sir. They talked to me about two or three  
8 more times.

9 Q. Two or three more times?

10 A. Yes, sir.

11 Q. And this was over a period of days and weeks and  
12 months they talked to you?

13 A. Yes, you know, after we passed on like that.

14 Q. After what?

15 A. As the days passed.

16 Q. The days passed?

17 A. You know, not the same day; other day or something  
18 like that.

19 Q. Well, even weeks and months later--

20 A. --yes--

21 Q. --they brought you and talked to you about it?

22 A. Oh, yes, sir.

23 Q. Do you remember when was the last time they actually  
24 brought you in to talk to you?

25 A. No, sir. I could not remember.

26 Q. Well, was it several months after the incident?

27 A. No, sir. It wasn't that long.

28 Q. Several weeks?

29 A. No, sir. It wasn't that long.

1 Q. How long?

2 A. I really don't, it wasn't quite that long. I can't  
3 remember though.

4 Q. Curtis, are you-- I mean, Doyle, are you a drug  
5 addict?

6 BY MR. EVANS: Your Honor, that is improper and  
7 opposing counsel knows it's improper. I object.

8 BY THE COURT: That's right. Sustained.

9 BY MR. BILLY GILMORE:

10 Q. Prior to this July 16th incident, when was the last  
11 time you saw Curtis Flowers?

12 A. Oh, that was, that is during the holidays.

13 Q. Are you talking about the Fourth of July?

14 A. Fourth of July, like that, yes, sir; during the  
15 holidays and all the visiting.

16 Q. Were you over at his house or he at your house or  
17 what did y'all--

18 A. --at his house, at his house, at his house, at his  
19 house and over to his grandmom's house.

20 Q. His mom or your mom?

21 A. His mom. His grandmom and them over there by his  
22 mama's house; yes, sir.

23 Q. Usually around the holiday the family gets together?

24 A. Sir?

25 Q. Around that holiday does the family get together?

26 A. No, I just passed, we just passed through there, me  
27 and my brother.

28 Q. Okay. But did you stop?

29 A. Yeah, we stopped for a little while.



1 Q. Okay, have a lot of family members there?

2 A. Yes, sir.

3 Q. Okay. Now you say Curtis is your nephew?

4 A. Yes, sir.

5 Q. And how are you related? Is his mother your sister  
6 or daddy or what?

7 A. My daddy, well, well, my daddy, you know, married,  
8 you know in the family.

9 Q. You are saying your daddy and his mother have the  
10 same--

11 A. No, my daddy and, uh, my daddy-- my daddy married his  
12 grandmother.

13 Q. Your daddy married his grandmother?

14 A. Right, and that would make me, you know--they just  
15 call, they all, we just call all of them family like that.

16 Q. Okay. Well, now you stopped by there on the Fourth  
17 of July. How long did you stay?

18 A. I can't remember.

19 Q. Okay, what was going on around there?

20 A. They was cooking out. They was cooking out and  
21 stuff.

22 Q. Drinking?

23 A. Drinking beer and stuff, yes, sir.

24 Q. Shooting fireworks?

25 BY MR. EVANS: Your Honor, unless opposing  
26 Counsel can show some relevance with the Fourth of  
27 July, I object to this. It's just a waste of time.

28 BY THE COURT: It is; unless you can show some  
29 relevance.

1 BY MR. BILLY GILMORE: Court indulge me one  
2 moment.

3 (Defense Counsel confer.)

4 BY MR. BILLY GILMORE:

5 Q. Doyle, you said that you had put the gun in your car  
6 the night before?

7 A. That evening.

8 Q. The evening of the 15th?

9 A. Yes, sir. That evening.

10 Q. Okay. But you left your car at your mother's house?

11 A. Right.

12 Q. And I believe you said it had been in the house for  
13 several days prior to that?

14 A. A couple of days; that weekend.

15 Q. Okay. And where had it been prior to then?

16 A. Sir?

17 Q. Where had it been prior to then?

18 A. In my, in the house.

19 Q. It had been in the house for how long?

20 A. Because I had put it in there-- where had it been  
21 when?

22 Q. No.

23 A. Say that again now.

24 Q. You said you put it in your car on the evening of  
25 July the 15th of '96?

26 A. That evening, yes, sir.

27 Q. All right, how long had it been at your mother's  
28 house?

29 A. Oh, it be there all the time.

1 Q. Well, had it been there for a month?

2 A. No, not in the house, no, sir.

3 Q. Where had it been all that time?

4 A. Well, I keep it, I usually, I usually have it in the  
5 car on occasion.

6 Q. Okay, you have it in the car. Okay. Did you have  
7 any particular reason for putting it in the car that particular  
8 afternoon?

9 A. Well, I was going to go up the road with it.

10 Q. Going to go up the road with it?

11 A. Yes, sir.

12 Q. What do you mean by that?

13 A. Going up the road, by David Weems.

14 Q. By David Weems?

15 A. Yes, sir.

16 Q. Who is David Weems?

17 A. That's my cousin.

18 Q. Okay, what was you going up there for?

19 A. We was going, he was going to clean it up for me.

20 Q. What do you mean he was going to clean it up?

21 A. Well, he--

22 BY MR. EVANS: --Your Honor, I object on  
23 relevance. When and who he was going to have clean  
24 his gun up has nothing to do with this case.

25 BY MR. BILLY GILMORE: Your Honor, they have  
26 been going into all this target practicing. I need  
27 to find out when he was shooting it.

28 BY THE COURT: Well, ask him that.

29 BY MR. BILLY GILMORE:

## Redirect

1 Q. So he was going to clean your gun up. Had you been  
2 shooting the gun?

3 A. Oh, yes, shot it during the, during the, during the  
4 New Year.

5 Q. During the New Year or Fourth of July?

6 A. New Year.

7 Q. Okay, you said "we"?

8 A. I said, I said we-- well, I had shot it during the  
9 New Year for, you know, to bring in the new year.

10 Q. Bringing in the new year?

11 A. Yes, sir.

12 Q. Okay, and this was January the 1st, and this was  
13 middle of July, and you were just getting it cleaned up then?

14 A. Sir?

15 Q. From the 1st January to the middle of July, you  
16 decided to get it cleaned--

17 A. --well, he said he would do it anytime.

18 Q. Beg your pardon?

19 A. He told me he would do it any time I got ready.

20 Q. Okay. So there is no way that Curtis Flowers would  
21 have known that gun was in that car that particular morning,  
22 was it?

23 A. No, sir. Not as I know.

24 BY MR. BILLY GILMORE: No further questions.

25 REDIRECT EXAMINATION BY MR. EVANS:

26 Q. Curtis knew you normally kept the gun in that car,  
27 didn't he?

28 A. Yes, sir.

29 Q. And he didn't know the gun had been in the house for

1 a couple of days, did he?

2 A. No, sir.

3 Q. You were able to tell that your glove box had been  
4 broken open that morning; is that right?

5 A. Yes, sir. Sho' did.

6 Q. Is there anything unusual about your glove box that  
7 allowed you to know for sure that somebody had broken into it  
8 that morning?

9 A. Say that again, sir?

10 Q. Is there anything about that glove box that allowed  
11 you to know for sure that it was broken into that morning?

12 A. Yes, sir, because it was open. It don't usually be  
13 open.

14 Q. And it was closed when you--

15 A. --it was closed when, it was closed definitely.

16 Q. Now you were asked about if somebody might have seen  
17 you at town. How many people saw you at work that morning?

18 A. About a hundred and something.

19 Q. There was a whole factory of people that were there  
20 with you; is that right?

21 A. Yes, sir.

22 Q. And those people were checked with; is that right?

23 A. Yes--

24 BY MR. BILLY GILMORE: --I'm going to object.  
25 There is no proof at all that people saw him that  
26 morning.

27 BY THE COURT: Sustained as to that last  
28 question.

29 BY MR. EVANS:

1 Q. How many people were you around that morning at work  
2 that saw you there?

3 A. Everybody. As a matter of fact, I goes to, from the  
4 top, from the front to the back.

5 Q. Is this a real big factory?

6 A. It's a real big factory. Got five-- one, two, three,  
7 four, five lines. I have to go by every--

8 Q. --I'm sorry; I couldn't understand you?

9 A. I have to go by everybody every morning.

10 Q. And who was your supervisor that you told about your  
11 gun being stolen out of the car?

12 A. Dorothy Rigby.

13 BY MR. EVANS: Nothing further, Your Honor.

14 BY THE COURT: Is he finally excused?

15 BY MR. EVANS: Yes, sir.

16 BY THE COURT: All right, you are free to go.

17 BY THE WITNESS: Thank you, sir.

18 WITNESS EXCUSED.

19 BY THE COURT: Who will you have next?

20 BY MR. HORAN: Mary Jeanette Fleming.

21 BY THE COURT: Ms. Fleming, have you been  
22 sworn?

23 BY THE WITNESS: (Witness nods her head.)

24 BY THE COURT: Have a seat up here, please.

25 MARY JEANETTE FLEMING,

26 a black female, having been called to testify as a witness by  
27 the State of Mississippi, having been previously sworn,  
28 testified as follows, to-wit:

29 BY THE COURT: State your name for the record.

1 BY THE WITNESS: Mary Jeanette Fleming.

2 BY THE COURT: Okay. Ms. Fleming, see that  
3 little microphone in front of you. That's the one  
4 you need to talk into.

5 DIRECT EXAMINATION BY MR. HORAN:

6 Q. Ms. Fleming, where do you live?

7 A. 702 Freeman.

8 Q. In Winona, Mississippi?

9 A. Yes.

10 Q. And where do you work?

11 A. At MS Sportswear in Kosciusko.

12 Q. How long have you been employed there?

13 A. Two months.

14 Q. On July the 16th of last year, 1996, were you still--  
15 were you living on Freeman then?

16 A. Yes, sir.

17 Q. Same place?

18 A. Yes, sir.

19 Q. Did you have an occasion to go to Weed Brothers that  
20 particular morning?

21 A. Yes.

22 Q. For what purpose?

23 A. I dropped my car off to have a windshield replaced.

24 Q. Do you remember about what time, approximately the  
25 time that you left your residence?

26 A. 10 minutes to 9:00.

27 Q. Did you go straight to Weed Brothers?

28 A. Yes.

29 Q. And how far would that be? Tell me how you would get

1 from your house to Weed Brothers or how you went that  
2 particular morning?

3 A. I went down Campbell Street, and I went down Campbell  
4 Street. I turned on Church Street. Then I went to Carrollton  
5 Avenue, and I went to Weed Brothers right behind Tardy's.

6 Q. Right behind Tardy's? There is an alley behind  
7 Tardy's; correct?

8 A. Yes.

9 Q. Weed Brothers is right behind Tardy's?

10 A. Yes.

11 Q. After you dropped your car off, what did you do then?

12 A. I dropped it off and I just, I told-- I had called  
13 them and told them I was going to bring it and drop it off.  
14 And so that's what I did; I dropped it off, and I started to  
15 walking, and I went back to, started walking home.

16 Q. Did you go back on Campbell Street the way you came?

17 A. Yes.

18 Q. Did you see an individual you knew then and know now  
19 as Curtis Flowers?

20 A. Yes, sir.

21 Q. In which direction? Where did you see him?

22 A. I seen him on Campbell.

23 Q. Was he walking?

24 A. Yes, sir.

25 Q. Which direction, toward town or away from downtown?

26 A. Towards town.

27 Q. Did you speak, or did he speak to you?

28 A. He spoke to me.

29 Q. Do you remember what he said?



1           A.    He spoke and said, "Hi, good looking," and I said  
2    "Hi."

3           Q.    How long have you known Curtis Flowers?

4           A.    Since he was grown.

5           Q.    Do you see him in the courtroom today?

6           A.    Yes.

7           Q.    Would you point to him, please?

8           A.    Right there.

9                   BY MR. HORAN: Your Honor, may I have the record  
10           reflect that she has identified the Defendant?

11                   BY THE COURT: Let the record reflect that.

12                   BY MR. HORAN: I tender the witness.

13                   BY MR. BILLY GILMORE: May I proceed, Your  
14           Honor?

15                   BY THE COURT: Uh-hum.

16    CROSS-EXAMINATION BY MR. BILLY GILMORE:

17           Q.    Ms. Fleming, you said you carried your car down to  
18    Weed's. Is that Weed Brothers?

19           A.    Yes.

20           Q.    That's an auto mechanic place?

21           A.    Yes, sir.

22           Q.    Now I believe your windshield had been broken a few  
23    days earlier?

24           A.    Yes, sir.

25           Q.    Now when you called down to Weed Brothers about  
26    bringing your car, did they say they had a windshield in  
27    stock?

28           A.    No. They said they had to order, but I called to get  
29    an estimate to see how much it cost, and I told them I was

1 going to bring it down there and leave it.

2 Q. Okay. And what time did you call down to get the  
3 estimate?

4 A. I called at 15 minutes to 9:00.

5 Q. All right, you called--

6 A. Yes, I did, and I left at 10 till to take it down  
7 there.

8 Q. Okay, so you called down at 15 minutes until 9:00.  
9 Okay, and you carried it-- you left your house at 10 minutes  
10 until 9:00. Okay, and how long would it take you to drive from  
11 your house over to Weed's shop?

12 A. Not less than about 5 minutes.

13 Q. Do you know about how far that is in miles?

14 A. I think about three.

15 Q. About three miles?

16 A. Two or three, yeah.

17 Q. Two or three miles. Okay, and you were walking back  
18 home?

19 A. Yes, sir.

20 Q. Now when you talked to someone at Weed's about the  
21 windshield when you called up to get an estimate, did they tell  
22 you to bring the car on then or when they got the windshield  
23 in?

24 A. They told me to-- I told them I was going to bring  
25 it now because they said they was going to get it the next day,  
26 and I dropped it off and I left it, and I picked it up that  
27 Friday evening.

28 Q. Now do you remember what day of the week it was you  
29 carried it around there?

1           A.    It was on a Tuesday; I remember.

2           Q.    On a Tuesday, and you picked it up on Friday?

3           A.    (Witness nods her head.)

4           Q.    Is that correct?

5           A.    Sir?

6           Q.    You picked it up on Friday?

7           A.    Friday evening, yes, after I got off from work.

8           Q.    Okay. Did they tell you they had the windshield in  
9 stock when you called?

10          A.    No. They told me they didn't have it in stock. They  
11 was ordering it, and it would be in the next day.

12          Q.    Why did you carry the car around there that day  
13 rather than waiting until the windshield got in?

14          A.    This is my car. I know when I wanted to take it.

15          Q.    Okay. But you are just going to leave it around  
16 there until the next day?

17          A.    I didn't leave it until-- I left it there until  
18 Friday until I got paid to get it out.

19          Q.    But they weren't going to work on it until the next  
20 day?

21          A.    Yes.

22                   BY MR. EVANS: Your Honor, I believe that  
23 question has been asked and answered about seven or  
24 eight times.

25                   BY THE COURT: It is, and I don't see the  
26 relevance in it. Sustained.

27 BY MR. BILLY GILMORE:

28          Q.    Ms. Fleming, if I have an invoice here in my hand  
29 showing that the windshield was ordered on July 16th of '96 at

1 8:02 A M, could that be right or wrong?

2 BY MR. EVANS: Your Honor, when the windshield  
3 was ordered--

4 BY THE WITNESS:

5 A. --I don't know when--

6 BY THE COURT: --Wait a minute, Ms. Fleming--

7 BY MR. EVANS: --has absolutely no relevance to  
8 her testimony. The only thing that is relevant is  
9 when she carried the vehicle and when she saw the  
10 Defendant.

11 BY THE COURT: Absolutely. Sustained.

12 BY MR. BILLY GILMORE:

13 Q. All right, so you started back walking home?

14 A. Yes.

15 Q. Okay. And you met Curtis Flowers?

16 A. Yes, I did.

17 Q. Tell us how he was dressed that morning?

18 A. He had on some black jeans and white shirt and a  
19 light wind breaker jacket.

20 Q. All right, black jeans, white shirt, and a  
21 windbreaker jacket. What color was it?

22 A. I think it was sort of gray. It was gray and had  
23 some kind of design on the shoulder.

24 Q. Okay. You didn't tell one of the investigating  
25 officers it was a purple type baseball jacket?

26 A. It was sort of purple on the shoulder.

27 Q. It was two tone?

28 A. Yes.

29 Q. Okay, but you are absolutely sure he was wearing a

1 jacket?

2 A. Yeah, I am sure. I seen it.

3 Q. This was the middle of July?

4 A. I can't help when it was. I know what he had on.

5 Q. Black pants. Were they short or long pants?

6 A. Long.

7 Q. Long pants. And what type white shirt was it?

8 A. What?

9 Q. Was it a T-shirt or dress shirt?

10 A. It was a dress shirt.

11 Q. A dress shirt. It wasn't a T-shirt?

12 A. No. It was a dress shirt button down the front.

13 Q. Button down the front. You are absolutely sure it  
14 wasn't a T-shirt?

15 A. No, it wasn't-- I know a T-shirt from a dress shirt.

16 Q. Okay. And a purplish gray baseball jacket?

17 A. Yeah.

18 Q. You said it had some kind of design on it?

19 A. Yes.

20 Q. Was it like a team logo or something on it, or do you  
21 know?

22 A. No.

23 Q. Do you remember if whatever you saw was in a  
24 different color from the jacket?

25 A. What, sir?

26 Q. The design you refer to on the jacket, I believe you  
27 were pointing to your left shoulder area or front of the  
28 shoulder. Was it a design or something in a different color?

29 A. Yes.

1 Q. But you don't remember whether it was a team logo or  
2 words or picture or what it was?

3 A. No.

4 Q. Do you know what kind of shoes he had on?

5 A. I didn't pay no attention to the shoes.

6 Q. Okay. Did you walk all the way home?

7 A. I made a stop when I was going up Campbell Avenue.  
8 After I passed him, I stopped and went to my friend's house,  
9 Carlene Green, and I stayed at her house about 30 minutes. And  
10 I left and I started, I went home then. And when I got to  
11 Piggly Wiggly, this lady had told me it was a murder at  
12 Tardy's. It was about, probably about 10:00 or after 10:00.

13 Q. Were you hot by the time you got that far?

14 A. Well, yeah.

15 Q. Sweating?

16 A. Sort of.

17 Q. So you found out about the incident up at Tardy's  
18 before you even got home?

19 A. Yes, sir.

20 BY MR. BILLY GILMORE: Tender the witness.

21 REDIRECT EXAMINATION BY MR. HORAN:

22 Q. Ms. Fleming, did you show a Mr. Johnson from my  
23 office where, in fact, you saw Curtis Fleming [sic] that  
24 morning? Did you point the spot to him where you saw him? Did  
25 you go out there with him on one day?

26 A. Yes, sir.

27 Q. And where on Campbell Street would that be? How  
28 far-- does it intersect to any street there in Winona?

29 A. It goes to Church Street.

1 Q. Okay, and intersects at Church Street?

2 A. Uh-hum.

3 Q. Okay, and was it close to that intersection that you  
4 saw the Defendant, Curtis Flowers?

5 A. He wasn't far from Church Street.

6 BY MR. HORAN: Thank you.

7 BY THE COURT: Anything further?

8 BY MR. HORAN: Nothing further, Your Honor.

9 BY THE COURT: Is she finally excused?

10 BY MR. HORAN: She is.

11 BY THE COURT: You are free to go, ma'am.

12 WITNESS EXCUSED.

13 BY THE COURT: Who do you have next?

14 BY MR. EVANS: Claude Dale Eskridge.

15 BY THE COURT: Mr. Eskridge, have you been  
16 sworn?

17 BY THE WITNESS: Yes, sir.

18 BY THE COURT: All right, have a seat up here,  
19 please.

20 CLAUDE DALE ESKRIDGE,

21 a black male having been called to testify as a witness by the  
22 State of Mississippi, having been previously sworn, testified  
23 as follows, to-wit:

24 BY THE COURT: State your name for the record,  
25 please, sir.

26 BY THE WITNESS: Claude Eskridge.

27 DIRECT EXAMINATION BY MR. EVANS:

28 Q. Mr. Eskridge, where do you live?

29 A. Winona.

1 Q. Do you know a person by the name of Curtis Flowers?

2 A. Yes, sir.

3 Q. How long have you known him?

4 A. About 5 or 6 years.

5 Q. Do you see him in the courtroom today?

6 A. Yes, sir.

7 Q. Would you point to him and identify him, please?

8 A. (Witness points.)

9 BY MR. EVANS: May the record reflect that he  
10 has identified the Defendant?

11 BY THE COURT: Let the record reflect that.

12 BY MR. EVANS:

13 Q. Approximately how often during that five year time  
14 period have you seen the Defendant?

15 A. It was about a month because I be working.

16 Q. About how often?

17 A. You say how often?

18 Q. Yeah, about how often would you see him?

19 A. About two or three times a week probably.

20 Q. All right, did you ever have an occasion to observe  
21 what type of tennis shoes he was wearing?

22 A. No, sir. All I do is just wore tennis shoes.

23 Q. All right, did you ever notice his tennis shoes?

24 A. Just regular tennis shoes.

25 Q. Can you describe them for me?

26 A. Something like a blue Fila.

27 Q. Do you remember giving a statement to John Johnson?

28 A. Yes, sir.

29 Q. Do you remember telling him that you have seen him



1 wearing Fila Grant Hills with stars on the toes--

2 BY MR. BILLY GILMORE: --I object, Your Honor.  
3 It's leading.

4 BY THE COURT: Sustained.

5 BY MR. EVANS: Sustained?

6 BY THE COURT: It's leading.

7 BY MR. EVANS: Yes, sir; it's leading. I am  
8 asking him if he has given a prior statement.

9 BY MR. BILLY GILMORE: He is also saying what he  
10 said in the statement.

11 BY THE COURT: Right. You said what he said in  
12 the statement. That is sustained.

13 BY MR. EVANS:

14 Q. Do you remember giving a statement to John Johnson?

15 A. Yes, sir.

16 Q. Do you deny that in that statement--

17 BY MR. BILLY GILMORE: --I object, Your Honor.  
18 He is trying to get in the back door what he can't  
19 get in the front door.

20 BY MR. EVANS: This is exactly the proper way to  
21 impeach a witness with a prior inconsistent  
22 statement, Your Honor.

23 BY MR. BILLY GILMORE: Your Honor, it's his own  
24 witness.

25 BY MR. EVANS: This is a witness that gave a  
26 statement. Let's see his statement. Your Honor,  
27 that is the exact way to go into a prior statement  
28 (Pause) Wait until the Court rules.

29 BY THE COURT: Let me see y'all up here.

1 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
2 THE JURY AS FOLLOWS:)

3 BY MR. EVANS: Your Honor, to be able to put  
4 John on to testify about the prior statement, I have  
5 got to specifically ask him if he denies making that  
6 statement to him, or I can't put John back on.

7 BY MR. HORAN: It's 613 (b).

8 BY MR. BILLY GILMORE: Well, if there has been a  
9 written statement, we are not aware of it.

10 BY MR. EVANS: That's what he told him.

11 BY MR. HORAN: Mr. Johnson has provided in his  
12 notes to-- it's in the discovery that we provided to  
13 them.

14 BY THE COURT: Isn't the way to answer it  
15 though, is your statement-- Is the statement you are  
16 giving here today different from the one that you  
17 gave to John Johnson?

18 BY MR. EVANS: No, sir. We have got--

19 BY MR. HORAN: --"Do you deny making that  
20 statement?"

21 BY THE COURT: Why is this witness testifying?

22 BY MR. EVANS: Because he told John and told him  
23 again this morning that he has specifically seen  
24 Curtis Flowers wearing white Fila Grant Hill tennis  
25 shoes with stars on the toes. In other words, he  
26 tried--

27 BY MR. BILLY GILMORE: --Don't get too loud.

28 BY MR. EVANS: Tried to purposely be put on the  
29 stand today so that he could lie under oath.

1           BY THE COURT: I frankly think this testimony is  
2 cumulative to everything else with all the testimony  
3 that you have about this other. I think it is  
4 cumulative.

5           BY MR. HORAN: Ask him to admit or deny--

6           BY MR. EVANS: --Well, that's what I've asked  
7 him.

8           BY MR. HORAN: --making the statement to John.

9           BY MR. EVANS: That's exactly what I asked.

10          BY MR. HORAN: I think that's the only way he  
11 can do it. If he denies making the statement--

12          BY THE COURT: --Why isn't it cumulative  
13 testimony?

14          BY MR. EVANS: Because they have-- at this point  
15 we have only put one witness on that specifically  
16 said that he had been seen wearing Fila Grant Hill  
17 tennis shoes.

18          BY THE COURT: And you have still only got one  
19 with this guy.

20          BY MR. EVANS: But under the Rules we are  
21 entitled to impeach.

22          BY THE COURT: Not necessarily. You are not  
23 entitled to have cumulative testimony.

24          BY MR. EVANS: But the objection wasn't to  
25 cumulative testimony.

26          BY THE COURT: I have a right under 403 to rule  
27 on that from that standpoint. We are not going to  
28 get this trial down into the last part of this trial  
29 and end up in a swearing match about who said who. I

1 mean we are not going to get it to that point, and I  
2 am just telling y'all that right there, both sides.

3 BY MR. HORAN: Was your ruling that it's  
4 cumulative?

5 BY THE COURT: Yeah, I am ruling it is  
6 cumulative.

7 BY MR. EVANS: Of course, what that is going to  
8 do, the jury is going to hear that version and won't  
9 hear his prior statement now.

10 BY THE COURT: He has just testified that the  
11 man was wearing Fila tennis shoes. There was only  
12 discrepancy as to whether they were Grant Hills. How  
13 can that be detrimental? I am ruling it is  
14 cumulative.

15 END BENCH CONFERENCE.

16 BY THE COURT: I sustain the objection on the  
17 basis that this is cumulative testimony.

18 BY MR. EVANS: Your Honor, is the Court's  
19 ruling, so that I will understand, that we have  
20 already put on proof about the tennis shoes, and the  
21 Court does not feel that it's necessary to put on any  
22 other witnesses about the tennis shoes?

23 BY THE COURT: That is exactly the Court's  
24 ruling.

25 BY MR. EVANS: Based upon that ruling, we have  
26 no further questions of this witness.

27 BY THE COURT: Cross-examination?

28 BY MR. BILLY GILMORE: Court indulge me one  
29 moment.

1 (Defense Counsel confer.)

2 BY MR. JOHN GILMORE: No questions of this  
3 witness, Your Honor.

4 BY THE COURT: Is he finally excused?

5 BY MR. EVANS: Yes, Your Honor.

6 BY THE COURT: You are free to go.

7 BY THE WITNESS: Thank you.

8 WITNESS EXCUSED.

9 BY MR. EVANS: Wayne Miller.

10 BY THE COURT: Mr. Miller, you have been sworn  
11 haven't you?

12 BY THE WITNESS: Yes, sir.

13 BY THE COURT: Have a seat up here.

14 HORACE WAYNE MILLER,

15 a white male having been called to testify as a witness by the  
16 State of Mississippi, having been previously sworn, testified  
17 as follows, to-wit:

18 BY THE COURT: State your name for the record,  
19 please, sir.

20 BY THE WITNESS: Horace Wayne Miller.

21 BY MR. HORAN: May I proceed, Your Honor?

22 BY THE COURT: Yes.

23 DIRECT EXAMINATION BY MR. HORAN:

24 Q. How are you employed?

25 A. I am sorry?

26 Q. How are you employed?

27 A. I am with the Mississippi Highway Patrol.

28 Q. And in what capacity?

29 A. I am an investigator.

1 Q. And how long have you been an investigator for the  
2 Highway Patrol?

3 A. Approximately 12 years.

4 Q. I want to direct your attention to the 16th of July,  
5 1996. Did you receive a call to proceed to Winona,  
6 Mississippi, for any particular reason on that date?

7 A. Yes, sir; I did.

8 Q. And were you accompanied by anybody, or were you with  
9 anybody?

10 A. No, I went on my own.

11 Q. Did you see another Highway Patrol investigator when  
12 you got there?

13 A. Investigator Matthews.

14 Q. Okay. Were you involved in the investigation of this  
15 particular case with Mr. Matthews?

16 A. I stayed-- well, I was involved in the investigation,  
17 and I stayed there at Tardy's, the furniture store.

18 Q. Did you at some point after the 16th have an occasion  
19 to go to Connie Moore's residence in Winona?

20 A. I went there on the 20th, I believe.

21 Q. Was it your understanding that the Defendant, Curtis  
22 Flowers, lived there?

23 A. Yes, sir.

24 Q. All right. Did you notice anything or come across  
25 anything in Ms. Moore's bedroom, any money at that particular  
26 time?

27 A. In the headboard of the bed in the bedroom was some  
28 cash money.

29 Q. And did you inventory that money?

1 A. Yes, sir.

2 Q. Get a description of it?

3 A. I did.

4 Q. How much was it?

5 A. It was \$255.00.

6 Q. Did you take it into your possession at that time?

7 A. No, sir. I did not.

8 Q. And why did you not do that?

9 A. At that time, you know, I examined it, and it didn't  
10 have anything that would indicate any blood or anything like  
11 that on it. So I didn't have any reason at that particular  
12 time to confiscate the money.

13 Q. Mr. Flowers had not been arrested at that particular  
14 time?

15 A. No, he had not.

16 BY MR. HORAN: Court will indulge me. (Pause) I  
17 will tender the witness.

18 BY MR. BILLY GILMORE: May I proceed, Your  
19 Honor?

20 BY THE COURT: Yes, sir.

21 CROSS-EXAMINATION BY MR. BILLY GILMORE:

22 Q. Mr. Miller, I believe it is Captain Miller now, isn't  
23 it?

24 A. Yes.

25 Q. Got a promotion here recently?

26 A. A couple of months ago.

27 Q. Okay, sir. Describe this headboard you are talking  
28 about.

29 A. Well, I don't know that you could say it's an open

1 headboard but just the, up at the head part of the bed. I  
2 don't recall it being a night stand or just exactly, but it was  
3 right around the head part of the bed.

4 Q. All right, was it like drawers or doors or, in the  
5 headboard?

6 A. I don't recall whether there was any doors there or  
7 not.

8 Q. All right, did you have to open something to view the  
9 money?

10 A. I think it was just laying there.

11 Q. All right, but it was inside the headboard?

12 A. Or around the headboard area.

13 Q. Well, you are saying around. Now I thought you told  
14 the DA it was inside the headboard. Now which is it?

15 A. I don't recall whether it was open, but I didn't open  
16 any drawers or anything. I don't recall whether it had a  
17 sliding door or not, but it was at the head part of the bed.

18 Q. But you do know it wasn't a straight up and down  
19 headboard. It was some type of box type?

20 A. Some type of box type.

21 Q. Okay. And you didn't see any significance of the  
22 money being there at that time?

23 A. I didn't, I just counted the money, inventoried it,  
24 and turned it over to Connie Moore.

25 Q. Why did you turn it over to Connie Moore?

26 A. Because she was the person there in the house. She  
27 had given us a consent to search, and she said that was her  
28 money.

29 Q. Said it was her money?



1 A. Right.

2 Q. And you went to the house to search. You didn't have  
3 a search warrant?

4 A. She gave us a consent to search.

5 Q. But you didn't obtain a search warrant before you  
6 got--

7 A. No. No, I did not.

8 Q. So when you got there, you told her you wanted to  
9 search her house?

10 A. We asked for permission.

11 Q. And she gave you that permission?

12 A. And she gave us the permission and signed that  
13 waiver.

14 Q. Okay, did you tell her what you were looking for that  
15 particular day?

16 A. I did not. We were, we were searching for a weapon  
17 that might have been used in the crime.

18 Q. Did you find one? .

19 A. I did not find one.

20 Q. What else were you looking for?

21 A. At that time we were looking for clothes that  
22 belonged to Curtis Flowers.

23 Q. All right, did you obtain some clothes from his  
24 dwelling at that time?

25 A. Investigator Matthews took possession of some  
26 clothes.

27 Q. Okay, were tests run on those clothes?

28 A. Yes, sir.

29 Q. Did you get the results on those tests?

1 A. Yes, sir. We did.

2 Q. Did that all come back negative?

3 BY MR. HORAN: Your Honor, the Crime Lab would  
4 have to testify to this. It's not relevant at this  
5 point unless he can show some relevancy to it.

6 BY THE COURT: Right. Sustained.

7 BY MR. HORAN: Your Honor, also, I would like,  
8 you know, he hasn't clarified exactly what exhibits  
9 or anything, and there were a number of tests run,  
10 and I object to it on relevancy.

11 BY THE COURT: Well, he can't testify to any  
12 results one way or another, and I sustained the  
13 objection. The jury is instructed to disregard that  
14 answer.

15 BY MR. BILLY GILMORE:

16 Q. Did you remove anything else from the house that day?

17 A. I didn't remove anything from the house myself.

18 Q. Okay, did you remove any other shoes that day?

19 A. I did not.

20 Q. Okay, did anyone in your group remove any shoes?

21 A. I don't know if that is the same day that some tennis  
22 shoes were obtained or not.

23 Q. Now this was on the 20th?

24 A. As far as I remember, it was the 20th that I counted  
25 the money.

26 Q. Just like four days after the incident up at Tardy's?

27 A. That's correct.

28 Q. All right, sir. Did you search her house more than  
29 one time?

1 A. That-- I did not.

2 Q. Who was with you on this particular time you are  
3 referring to on the 20th?

4 A. Investigator Matthews and District Attorney  
5 Investigator, John Johnson.

6 Q. But you were with them at all times?

7 A. Yes, sir.

8 Q. Okay. And what you have testified they took from the  
9 house is all you saw removed?

10 A. Ask me that again; I did not hear.

11 Q. I said did you see everything that was removed from  
12 the house?

13 A. Yes, sir.

14 Q. Okay. And you have told the Court everything you saw  
15 removed from the house?

16 A. As far as I can remember. I don't have a list of  
17 what was taken right at that time.

18 Q. All right, sir.

19 BY MR. BILLY GILMORE: No further questions.

20 BY MR. HORAN: Nothing further of this witness,  
21 Your Honor.

22 BY THE COURT: Is he finally excused?

23 BY MR. HORAN: He is.

24 BY THE COURT: You are free to go.

25 WITNESS EXCUSED.

26 BY THE COURT: Who do you have next?

27 BY MR. EVANS: John Johnson.

28 BY THE COURT: You have already been sworn,  
29 haven't you?

1 BY THE WITNESS: Yes, sir.

2 JOHN JOHNSON,

3 a white male having been called to testify as a witness by the  
4 State of Mississippi, having been previously sworn, testified  
5 as follows, to-wit:

6 BY THE COURT: State your name for the record.

7 BY THE WITNESS: John Johnson.

8 BY MR. EVANS: May I proceed, Your Honor?

9 BY THE COURT: (Court nods his head.)

10 DIRECT EXAMINATION BY MR. EVANS:

11 Q. Mr. Johnson, how are you employed?

12 A. I am a criminal investigator for the District  
13 Attorney in the Fifth District.

14 Q. And would you tell the jury a little bit about your  
15 law enforcement background?

16 A. I started in 1972 with the Winona Police Department.  
17 I served a number of years there and in Grenada. I was  
18 Assistant Chief in Winona four years, six years Chief of  
19 Police, and about six years now with the District Attorney's  
20 Office as an investigator.

21 Q. All right, did you have an occasion to go with me to  
22 Winona to Tardy Furniture on July the 16th, 1996?

23 A. Yes, I did.

24 Q. Approximately what time did you arrive at Tardy  
25 Furniture?

26 A. Probably around a quarter to 11:00; right at that  
27 time.

28 Q. And have you assisted the Winona Police Department  
29 and the Mississippi Highway Patrol in this investigation?

1 A. Yes, I have.

2 Q. Have you talked to numerous witnesses in this case?

3 A. Yes, sir.

4 Q. Were you present when Curtis Flowers was interviewed  
5 on a couple of different occasions?

6 A. On one occasion.

7 Q. Did you hear the Defendant make any comments about  
8 whether or not he was ever on the east side of Highway 51 on  
9 the date of these murders?

10 A. I asked him specifically had he been east of 51  
11 Highway that morning, and his statement was that he had not. I  
12 specifically asked him that question and went on and asked him  
13 did he cross the street to Jeff's Drive In across from Jeff's  
14 store there in Winona. He denied being east of 51 at all that  
15 morning.

16 Q. All right, have you prepared a map that shows part of  
17 the downtown area?

18 A. Yes, sir.

19 Q. I'm going to hand you Exhibit 83A and ask you if you  
20 can identify what this is?

21 A. This is an overlay of the downtown area including the  
22 downtown area that involves Tardy Furniture store and some  
23 other areas of south Winona.

24 Q. And does that overlay map show the area where Tardy's  
25 Furniture was, the downtown Winona area, and Highway 51?

26 A. Yes, it does.

27 Q. Does it truly and accurately show those areas?

28 A. Yes.

29 BY MR. EVANS: Your Honor, I offer this exhibit

1 into evidence.

2 BY THE COURT: I missed your number, Mr. Evans.

3 BY MR. EVANS: 83A, Your Honor.

4 BY THE COURT: Any objection?

5 BY MR. BILLY GILMORE: Could I look at it, Your  
6 Honor, to know which one we are dealing with?

7 BY THE COURT: Are you just offering the over-  
8 lay?

9 BY MR. EVANS: Yes, sir.

10 BY MR. BILLY GILMORE: No objection.

11 BY THE COURT: Do you have the thing that that  
12 was made from?

13 BY MR. EVANS: Yes, sir.

14 BY THE COURT: It might be helpful if you  
15 introduce both of them if they are the same thing.

16 BY MR. EVANS: 83 and 83A, Your Honor; I would  
17 offer these two exhibits into evidence.

18 BY THE COURT: All right. Any objection?

19 BY MR. BILLY GILMORE: No, Your Honor.

20 BY THE COURT: Okay, let them be admitted.

21 That is for the purposes of in case they want to take  
22 it with them to the jury room.

23 (Pause while Mr. Evans examines S-83 and S-83A.)

24 BY MR. EVANS: I was just making sure it was the  
25 same one.

26 BY THE COURT: Okay, that is fine.

27 (MAP OF LARGER WINONA AREA AND OVERLAY

28 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-83 AND S-83A  
29 FOR IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

1 BY MR. BILLY GILMORE: Turn it over.

2 BY THE WITNESS: That's right.

3 BY MR. EVANS: This is it right here.

4 BY MR. EVANS:

5 Q. Let me hand you this pointer. Would you point out on  
6 that overlay for the ladies and gentlemen of the jury where  
7 Tardy Furniture is located?

8 A. (Pause) It's Carrollton Avenue right there on Front  
9 Street at the corner of Front and Carrollton Street, right in  
10 the area where that light is bouncing.

11 (NOTE: Mr. Johnson was pointing the red laser  
12 light at the projected image from S-83A shown on the  
13 wall.)

14 Q. All right, hold on just a minute.

15 BY THE COURT: You are worse than I am.

16 (Laughter)

17 BY MR. EVANS:

18 Q. It's right here; is that correct? Right here?

19 A. No. Right--

20 Q. --right where I put that?

21 A. Yes, sir.

22 Q. That is where Tardy Furniture is located?

23 A. Right against that street, Carrollton Street and  
24 Front Street.

25 Q. All right, would you describe that area of town for  
26 those on the jury?

27 A. That's a business part of downtown Winona, the older  
28 part of Winona right there.

29 Q. And--

1           A.    --This is a railroad in front. Front Street is a  
2 pretty wide street, and Tardy Furniture there is a large  
3 furniture store. It is really made up of a couple of  
4 buildings, and there are two empty buildings right beside that  
5 adjoin this alley or street here. Coast to Coast would be  
6 there next to it and other businesses there.

7           Q.    Can you point out on that diagram where Curtis  
8 Flowers was living on the 16th?

9           A.    At least part of the time on McNutt Drive. This is  
10 it here. It comes off of 51 to Powell. You can go either way  
11 here. It would be the second building on the right, I  
12 believe. It's 702 A McNutt.

13          Q.    And would you point out where Highway 51 is on that  
14 diagram?

15          A.    Just go back here to Powell, and that is 51 at the  
16 intersection.

17          Q.    It runs north and south?

18          A.    Yes, sir.

19          Q.    Would that be across on the way it's laid out?

20          A.    Yes, sir. Pretty well north and south; 51 does.

21          Q.    Do you see a location that you know as Angelica on  
22 that diagram?

23          A.    Angelica is a plant that is located right in here.  
24 This is really the old, old Highway 51 known as Church Street,  
25 and when it gets down in this area, this is Highway 407, and  
26 then you come back just south of that. There is a pretty large  
27 plant right here. This Donager Drive, this was taken from an  
28 old map, made up from an old map. That is known Angelica Drive  
29 that runs between Church and 51 Highway.



1 Q. Which side, east or west, of Highway 51 is Angelica  
2 located?

3 A. It's east. This would be east of 51, and of course,  
4 51 is here; Angelica Drive there.

5 Q. Do you know where James Edward Kennedy was living at  
6 that time?

7 A. Yes, I do.

8 Q. Would you point that location out?

9 A. Yes, sir. He lived at Highway 51 there and Angelica  
10 Drive, right at the corner.

11 Q. All right.

12 A. Right in here.

13 Q. And how far was it from his house to Angelica?

14 A. (No immediate response).

15 Q. Give me an approximate?

16 A. I would say five or six hundred yards maybe.

17 Q. All right, was there a road that went through from 51  
18 to Angelica?

19 A. Yes, sir. This that is marked Donager Drive, that is  
20 Angelica Drive now.

21 Q. And is that road that went by his house go directly  
22 by his house?

23 A. Yes. His house sits right in the corner of Angelica  
24 Drive and Highway 51 and the northeast corner.

25 Q. Will you point out a location where Edward Lee  
26 McChristian saw the Defendant that day?

27 A. Right here on Academy Street, would be north of 407.  
28 Let's see; that's Mortimer. I believe it would be right in  
29 here.

1 Q. And that is 603 Academy Street?

2 A. 603 Academy; yes, sir.

3 Q. Can you also point out on that diagram a location  
4 where Mary Jeanette Fleming showed you that she saw the  
5 Defendant that day?

6 A. Mary Jeanette Fleming would go back north to-- let me  
7 find the, uh, okay, here it is. This is Campbell Street. It  
8 would be right at these, the second house or so right in here  
9 on Campbell Street just west of Church.

10 Q. All right, and is both of those, are both of those  
11 locations on the east side of Highway 51?

12 A. Yes, sir, definitely.

13 Q. Do you see a location on there that Clemmie Fleming  
14 showed you that she saw the Defendant running?

15 A. Was right here. Again, it is Tardy Furniture at the  
16 intersection, and I stepped off from the corner of the building  
17 and asked her to step it off. It was 74 steps of my steps to  
18 the location where he was first seen running in a westwardly  
19 direction.

20 Q. All right.

21 A. That's where she first saw him, and then he was,  
22 continued west.

23 Q. And again, of course, is this on the east or west  
24 side of Highway 51?

25 A. It is definitely east of Highway 51.

26 Q. All of these locations then the Defendant denied that  
27 he was at on that morning?

28 A. Yes, sir. He denied that.

29 Q. Did you have an occasion to check the shoe sizes of

1 the different individuals that lived at Connie Moore's house?

2 A. Yes, sir. I did.

3 Q. Did you have an occasion to check Lemarcus Moore's  
4 shoe size?

5 A. Yes, sir; I did.

6 Q. What was his shoe size?

7 A. Approximately 8 and a half.

8 Q. Did you have an occasion to check Marcus Moore's shoe  
9 size?

10 A. Yes, sir.

11 Q. What was that?

12 A. 12.

13 Q. And did you have an occasion to check Curtis Flowers'  
14 shoe size?

15 A. Yes, sir. 10 and a half.

16 Q. Now there has been some photographs already  
17 introduced, and I'm not going to show them again, but you were  
18 present when the projectile was recovered from the mattress; is  
19 that correct?

20 A. Yes, I was.

21 Q. And I believe you were, in fact, the person that  
22 recovered that projectile; is that right?

23 A. Yes, I was.

24 Q. Would you explain to the jury how you were able to  
25 determine where that projectile was?

26 A. I witnessed the crime scene that morning, July the  
27 16th, and I knew the blood splatters went in the direction of  
28 the brick column where there was an apparent chip in the brick,  
29 paint removed and chip. Looking at Ms. Bertha's body, (Pause

1 while witness composes himself) I could plot the trajectory of  
2 the bullet and knew that it had to be in the mattress.

3 Q. All right, and did you, in fact, follow that path  
4 that you knew it had to be and find a hole in that mattress?

5 A. Yes, I did.

6 Q. And it was after that that you, Robert Jennings, Jack  
7 Matthews, and Wayne Miller cut the mattress open and recovered  
8 that projectile; is that correct?

9 A. That's correct.

10 Q. Were you also present at a time that Curtis Flowers  
11 denied he owned or had any other tennis shoes besides the ones  
12 that he had furnished?

13 A. That's correct.

14 BY MR. EVANS: One second, Your Honor.

15 Q. Mr. Johnson, I want to put the map back up there  
16 again and ask you if you see the second location that Clemmie  
17 Fleming stated that she saw the Defendant?

18 A. Yes, sir. Right there. That is Silver Street  
19 crossing 51 Highway approaching the store. The store is right  
20 in that corner, the one on -- it would be just on the west side  
21 of 51 Highway. She said he was headed in the direction of the  
22 store, but she couldn't say he went in the store or went on  
23 west on Silver.

24 BY MR. BILLY GILMORE: Object to hearsay, Your  
25 Honor.

26 BY MR. EVANS:

27 Q. All right. Just point out the location.

28 A. I'm sorry.

29 BY THE COURT: Overruled.

1 BY THE WITNESS:

2 A. The location is there; Silver Street and 51 Highway.

3 Q. What I would like for you to do so that we will have  
4 a record, would you take this hard diagram and draw arrows from  
5 the different locations that you have just described and show  
6 in the sidelines of what is at that location, who identified  
7 him at those different locations?

8 BY THE COURT: When he does that, then let Mr.  
9 Gilmore look at it.

10 BY MR. EVANS: Yes, sir.

11 (Witness marks on Exhibit S-83.)

12 BY THE WITNESS:

13 A. I have got Annette Fleming, Clemmie Fleming,  
14 Katherine Snow. Who else?

15 Q. McChristian.

16 A. Okay. (Witness marks further on Exhibit S-83.) Who  
17 else did you want?

18 Q. I think that's all we need on there for right now.

19 BY THE COURT: Have you completed that, Mr.  
20 Johnson?

21 BY THE WITNESS: I have completed McChristian,  
22 Annette Fleming, Clemmie Fleming, and Katherine Snow.

23 BY MR. EVANS:

24 Q. Also, let me-- I'm going to hand you this red marker,  
25 and if you would, just draw over where Highway 51 is with that  
26 red marker?

27 A. Sure.

28 Q. All right, the other location I would like for you to  
29 point out on there is where Curtis was living at that time.

1 A. (Witness marks on diagram.)

2 Q. Thank you.

3 (Mr. Evans hands Exhibit S-83 to Mr. Billy  
4 Gilmore.)

5 BY MR. EVANS:

6 Q. Mr. Johnson, did you have an occasion at my request  
7 to walk these areas to make any determinations?

8 A. Yes, I did.

9 Q. Can you tell the ladies and gentlemen of the jury  
10 approximately how long it takes to walk these different areas?

11 A. It took me less than 15 minutes to walk from the  
12 front door of Tardy Furniture to the front door of where Curtis  
13 Flowers lived on McNutt Drive.

14 Q. And is that walking at a normal pace?

15 A. At a steady pace.

16 Q. Did you walk the area from Curtis Flowers' house to  
17 Angelica?

18 A. Took me approximately 12 minutes.

19 Q. And did you go by way of-- well, just tell us which  
20 direction you went.

21 A. From-- would you repeat the directions from what  
22 location to--

23 Q. --From Curtis' house to Angelica.

24 A. Approximately 12 minutes. I walked back north on  
25 Cemetery Lane, which is at the intersection there just south of  
26 McNutt Circle to Powell, from there to 51 Highway, from there  
27 to Angelica Drive, from there west-- correction, east to  
28 Angelica.

29 Q. And is that going by way of where James Edward

1 Kennedy saw him turn in toward Angelica?

2 A. That's correct.

3 BY MR. EVANS: Your Honor, I will tender the  
4 witness.

5 BY MR. BILLY GILMORE: May I proceed, Your  
6 Honor?

7 BY THE COURT: Uh-hum.

8 CROSS-EXAMINATION BY MR. BILLY GILMORE:

9 Q. Mr. Johnson, I believe you said you arrived at the  
10 Tardy's Furniture store about 10:45 that morning?

11 A. Approximately, yes, sir.

12 Q. Where were you when you got the call?

13 A. I was at the District Attorney's Office in Grenada,  
14 Mississippi.

15 Q. And how long does it take you normally to drive from  
16 Grenada to Winona?

17 A. Probably 25 minutes.

18 Q. Now you interviewed Curtis Flowers, I believe you  
19 said, one time or you were present one time when he was  
20 interviewed?

21 A. I was involved in the initial interview with Curtis  
22 Flowers.

23 Q. Was that on the day of the 16th?

24 A. Yes, sir.

25 Q. Do you know about what time of day it was?

26 A. I think it was around 1:30. I don't remember  
27 exactly.

28 Q. Do you know how Mr. Flowers was dressed?

29 A. He had on a blue jersey kind of sweat shirt and blue

1 same type material shorts and some old tennis shoes.

2 Q. Do you know what brand they were?

3 A. No, sir. I don't remember the brand name on those  
4 shoes, but they were -- I don't remember the brand name.

5 Q. Okay.

6 A. I think they were Nikes.

7 Q. Now since that time, you have been investigating  
8 pretty thorough on this case, have you not, since July 16th of  
9 '96?

10 A. Myself and others have been working pretty hard on  
11 it; yes, sir.

12 Q. You have spent a lot of man hours on this particular  
13 case?

14 A. Yes, sir.

15 Q. Would it be true to say, Mr. Johnson, you have  
16 probably spent more man hours on this case than you have in any  
17 other one case in your history of law enforcement?

18 A. Yes, sir.

19 Q. Now Mr. Johnson, you said you checked shoe sizes at  
20 Connie's house. Is that correct?

21 A. I said that; yes, sir.

22 Q. Okay, now I believe Marcus Moore does not live there;  
23 is that right?

24 A. That's correct.

25 Q. So where did you check his shoes?

26 A. His father brought him to the police department, and  
27 I interviewed him and his father.

28 Q. Okay, and was this in '97?

29 A. I believe that was in '96.



1 Q. Do you know about when?

2 A. No, sir. I don't remember the date. It was very  
3 informal. I just asked him what size shoes he wore.

4 Q. But it was several months after this incident at  
5 Tardy's?

6 A. I wouldn't say several months after it, no, sir.

7 Q. And how old is Lemarcus?

8 A. At the time of the murders he was like 12 to 13 is  
9 what was referred to me.

10 Q. That is the time when a child's foot just starts  
11 growing; is that right?

12 A. I don't know what time they grow in particular.

13 Q. All right, Mr. Johnson, did you walk other areas of  
14 Winona from point to point other than the ones you have  
15 described to Mr. Evans?

16 A. (Pause) No, sir. I don't remember walking any other  
17 for that specific purpose.

18 Q. Now you walked from McNutt Drive where Mr. Flowers  
19 lives to Angelica. Is it Angelica Street or Angelica factory?

20 A. The factory.

21 Q. Okay, sir. And what is the distance, if you know,  
22 between those two points?

23 A. I don't know the exact distance.

24 Q. Well, would you say it was, it's a mile or over?

25 A. It might be a mile by going around the streets, but  
26 in a straight line, it would be a lot shorter than that.

27 Q. Okay. Which way did you go?

28 A. Like I testified, I went from the front of his house  
29 to Cemetery Lane, from there to Powell Street, to 51, south to

1 Angelica Drive and then east to the factory.

2 Q. It took you about 15 minutes?

3 A. I think that took about 12.

4 Q. 12 minutes; I'm sorry. All right, did you walk or  
5 did you make any kind of time estimate from Angelica to Tardy's  
6 Furniture?

7 A. No, I did not.

8 Q. Did you make any measurement or any time frame from  
9 Angelica to where Mr. McChristian lived?

10 A. Yes, sir. It was approximately 10 or 12 minutes.

11 Q. 10 or 12 minutes. That is from Angelica parking lot  
12 or out in the street, or where did you start from?

13 A. At the location where I was told Doyle Simpson's  
14 vehicle was parked.

15 Q. Okay, and from there to Mr. McChristian's house took  
16 you 10 to 12 minutes?

17 A. About 10 really.

18 Q. 10, okay. All right, did you measure by measurement  
19 or by time from Mr. McChristian's house on to Tardy's  
20 Furniture?

21 A. No, sir. I did not.

22 Q. Did you measure either by time or by distance from  
23 Mr. McChristian's back to Mr. Flowers' apartment?

24 A. No, sir. I did not.

25 Q. So that's only three places you walked in time. You  
26 were walking?

27 A. Yes, sir.

28 Q. Okay, and that was at your normal walk?

29 A. Well, I did walk from the back corner of Tardy

1 Furniture store to the location where Clemmie Fleming  
2 identified Curtis Flowers running, and that was 74 steps.

3 Q. You stepped that off; you didn't time that?

4 A. Correct.

5 Q. 74 steps. Is a normal step three feet?

6 A. Yes, sir; I stepped pretty close to a yard.

7 Q. So that would be over 220 feet?

8 A. (No response.)

9 Q. Mr. Johnson, as you interviewed various and sundry  
10 witnesses, and I presume you probably interviewed quite a few,  
11 did you not?

12 A. Yes, sir.

13 Q. Would you say hundreds?

14 A. I don't think hundreds.

15 Q. Less than a hundred?

16 A. Maybe close to a hundred; I don't know exactly.

17 Q. Close to a hundred. Now you were aware there was a  
18 reward posted involving this situation, did you not?

19 A. Yes, sir. I was aware of it.

20 BY MR. EVANS: That is irrelevant from this  
21 witness.

22 BY THE COURT: How is it relevant?

23 BY MR. BILLY GILMORE: I'm going to tie that in,  
24 Your Honor.

25 BY THE COURT: Okay. I will let you go a little  
26 further.

27 BY MR. BILLY GILMORE:

28 Q. Mr. Johnson, as you interviewed some of these  
29 witnesses, did you not advise them of the reward money?

1           A.    I didn't mention reward money to any of the witnesses  
2 until after they had made statements, but I have had, on  
3 occasion I did mention to some that there was a reward.

4           Q.    And how much reward was offered?

5           A.    \$30,000.00.

6           Q.    Mr. Johnson, are you aware of being posters or fliers  
7 passed out around the City of Winona involving or announcing  
8 the reward?

9           A.    I knew there was some out there; yes, sir.

10          Q.    Did you ever post any of them yourself?

11          A.    I could have. I don't know that I did or I didn't.

12          Q.    Okay, sir. Did you see these reward notices  
13 throughout Winona?

14          A.    I saw some; yes, sir.

15                BY MR. EVANS: Your Honor, this is not relevant  
16 unless he can tie it to a witness.

17                BY THE COURT: That's correct. Just the fact  
18 that there was one posted is not relevant.

19                BY MR. BILLY GILMORE: Your Honor, I'm going to  
20 offer--

21                BY THE COURT: --You got him to testify in  
22 relation to the witnesses he has talked to. He has  
23 already made that statement.

24                BY MR. BILLY GILMORE: I'm going to offer this  
25 flier in as evidence.

26                BY THE COURT: Any objection?

27                BY MR. EVANS: I have no objection. It's not  
28 relevant--

29                BY THE COURT: --Okay, let it be marked--

1 BY MR. EVANS: --but I don't object.

2 BY THE COURT: Let it be marked.

3 (REWARD FLIER PREVIOUSLY MARKED AS DEFENDANT'S  
4 EXHIBIT D-1 FOR IDENTIFICATION WAS NOW RECEIVED IN  
5 EVIDENCE.)

6 BY MR. BILLY GILMORE:

7 Q. Mr. Johnson, I show you what has been marked as D-1.  
8 Is that the one you are testifying about?

9 A. This looks like the ones I saw; yes, sir.

10 Q. Getting back to my question, isn't it true that you  
11 made certain witnesses knowledgeable of the fact there was a  
12 reward--

13 BY MR. HORAN: --Your Honor, the objection is he  
14 has got to say witness A, B, C, D, E. He interviewed  
15 a hundred witnesses. The witnesses have testified,  
16 Your Honor.

17 BY THE COURT: The objection is that he has  
18 already answered that question.

19 BY MR. BILLY GILMORE:

20 Q. Well, let me ask you one specifically, Mr. Johnson.  
21 Do you remember offering Earl Campbell reward if he would  
22 produce the shoes involved?

23 BY MR. EVANS: Your Honor, that is not relevant.

24 BY THE COURT: It's not. Sustained.

25 BY MR. BILLY GILMORE: Well, Your Honor, he  
26 hasn't answered yes or no.

27 BY THE COURT: Mr. Campbell hasn't testified.

28 BY MR. EVANS: That's right.

29 BY MR. BILLY GILMORE:

1 Q. Mr. Johnson, the projectile that was found in the  
2 mattress, what date did you find that?

3 A. August the 13th, 1996.

4 Q. Almost a month after the event there at Tardy's?

5 A. That's true.

6 Q. Now you had been investigating this thing for almost  
7 a month. Why did you decide to go back and check this  
8 particular point?

9 A. It was a few days prior to that or somewhere near  
10 that time that I learned through information that came back to  
11 me concerning crime scene and autopsies that there were two,  
12 well, two rounds that were not accounted for. I knew that that  
13 round was not recovered. I reviewed the crime scene, and I  
14 knew it had to be there.

15 Q. So you went back and searched inch by inch to find  
16 that?

17 A. I walked into the back of this furniture store,  
18 walked to the rear, walked directly to that column. Within  
19 five minutes of the time I walked in the store, I found the  
20 bullet.

21 Q. Do you know whether or not that was one of the  
22 projectiles that was used on July the 16th of 1996?

23 A. I do.

24 Q. You do know that?

25 A. Yes, sir. I do know.

26 Q. How do you know that, Mr. Johnson?

27 A. Because it was confirmed by the State Lab. It  
28 matched.

29 Q. Matched what?

1           A.    The other rounds involved there.  It matched a round  
2   that was found behind Doyle Simpson's mother's house in a  
3   post.

4           Q.    But it did not match anything at the crime scene, did  
5   it?

6           A.    I don't know about that.

7                   BY MR. BILLY GILMORE:  Court indulge me.

8                   (Defense Counsel confer.)

9                   BY MR. BILLY GILMORE:  No further questions,  
10   Your Honor.

11   REDIRECT EXAMINATION BY MR. EVANS:

12           Q.    Mr. Johnson, you have been asked about the  
13   extensiveness of this investigation.  Have you ever seen a  
14   murder scene in our district where we have had four bodies in  
15   one particular scene?

16           A.    No, sir.  I hope I never do again.

17           Q.    Would you say that this is probably the worst murder  
18   scene that we have ever had in this district?

19           A.    The worst that I know about; yes, sir.

20           Q.    Do you feel it justified an extensive investigation?

21           A.    Certainly.

22           Q.    After you received the autopsy reports back from Dr.  
23   Hayne, did you at that point know specifically what path the  
24   bullets had taken through her?  Just, we will just take it one  
25   step at a time.

26           A.    I know that the bullet left her head and went--

27           Q.    All right, and the day that we were at the scene on  
28   the 16th, I believe every investigator that was there knew  
29   where this projectile had struck that post; is that correct?

1           A.    Yes, sir.  That's true.

2           Q.    And it was agreed from everyone that that is probably  
3 where the bullet that went through her head had struck; is that  
4 correct?

5                   BY MR. BILLY GILMORE:  Your Honor, I'm going to  
6 object to this line of testimony.  The expert has  
7 testified that she examined the same thing, and she  
8 couldn't say whether it was-- that she called it a  
9 defect was a ricochet from a bullet.

10                  BY MR. EVANS:  Your Honor, I didn't ask what she  
11 said.  I said what every investigator there agreed  
12 to, and he has attacked him on going back and  
13 searching inch by inch through the building.  And I'm  
14 trying to explain that he didn't have to go back and  
15 search inch by inch.  Everyone knew where the bullet  
16 was.

17                  BY THE COURT:  Okay.  I will allow it.  But that  
18 is really, that area has been explored now by both  
19 sides--

20                  BY MR. EVANS:  --There is one other point that I  
21 wanted to bring up on it, and I had to lead up to it.

22                  BY THE COURT:  All right, sir.

23 BY MR. EVANS:

24           Q.    Before you actually cut into that mattress, did you  
25 call anyone to get permission to cut into the mattress?

26           A.    I called Roxanne Ballard and told her that I wanted  
27 to cut into that mattress, and I got her permission to do so.

28           Q.    And you have been asked about the reward.  Before you  
29 talked to James Edward Kennedy, did you mention anything about



1 reward to get him to make a statement to you?

2 A. No, sir. I did not.

3 Q. Before you talked to Katherine Snow, did you make any  
4 comment about a regard to get her to talk to you?

5 A. No, sir. I did not.

6 Q. Before you talked to Edward Lee McChristian, did you  
7 make him any promises of reward to get him to talk to you?

8 A. No, sir.

9 Q. Before you talked to Mary Jeanette Fleming, did you  
10 make her any promises of reward to get her to talk to you?

11 A. No, sir. I did not.

12 Q. Before you talked to Charles Collins, did you make  
13 him any promises of reward to get him to talk to you?

14 A. No, sir. I did not.

15 Q. Before you talked to Clemmie Fleming, did you make  
16 her any promises of reward to get her to talk to you?

17 A. No, sir. I did not.

18 Q. Before you talked to any of these witnesses that have  
19 testified here, did you ever promise them a reward if they  
20 would give a statement or come up here and testify to what they  
21 knew?

22 A. No, sir. I did not.

23 Q. Did these people volunteer this information to you  
24 when you asked them?

25 A. They did.

26 BY MR. EVANS: Nothing further of this witness,  
27 Your Honor.

28 BY THE COURT: All right. Mr. Johnson, you may  
29 return to the witness room. Who will you have next?

1 WITNESS LEAVES COURTROOM.

2 BY MR. EVANS: Your Honor, may we have a short  
3 break?

4 BY THE COURT: All right. Ladies and gentlemen,  
5 we will take about 15 minutes.

6 (DURING THE AFTERNOON RECESS ON OCTOBER 15,  
7 1997, AN EXTRA BAILIFF WAS SWORN BY THE CLERK.  
8 FOLLOWING THE BREAK, COURT RECONVENED IN THE  
9 COURTROOM WITH ALL COUNSEL EXCEPT MR. JOHN GILMORE.  
10 THE DEFENDANT WAS NOT PRESENT AND THE JURY WAS OUT  
11 FOR THE FOLLOWING:)

12 BY THE COURT: What says the State?

13 BY MR. EVANS: Your Honor, at this point the  
14 State of Mississippi rests on its case in chief.

15 BY THE COURT: All right.

16 BY MR. BILLY GILMORE: Your Honor, we have a  
17 motion just as soon as my cohort gets here.

18 BY THE COURT: Okay.

19 (MR. JOHN GILMORE AND THE DEFENDANT ENTER THE  
20 COURTROOM.)

21 BY THE COURT: Mr. Gilmore, are you ready to  
22 make your motion?

23 BY MR. JOHN GILMORE: Yes, Your Honor.

24 BY THE COURT: All right.

25 BY MR. JOHN GILMORE: Your Honor, at this time  
26 we would make a Motion for a Directed Verdict on the  
27 grounds that the State has failed to prove all the  
28 elements of the crime of capital murder which would  
29 be a murder in the course of armed robbery. We do

1 not feel that they have proven that a robbery took  
2 place or that this Defendant did either the robbery  
3 or the murder. And we make a Motion for a Directed  
4 Verdict.

5 BY THE COURT: All right, let the record reflect  
6 that that Motion is also filed in writing in this  
7 cause. The Court overrules that Motion. Okay. It's  
8 after 5:00. We are going to quit for the day. We  
9 will start with the Defense's first witness at 9  
10 o'clock in the morning. I need you to get the jury  
11 now so I can make this announcement to them.

12 (JURY RETURNS TO THE COURTROOM AT 5:10 P.M.)

13 BY THE COURT: Ladies and gentlemen, the State  
14 has rested in this case, and so we are now set for  
15 the Defense to begin their case, but it's after 5  
16 o'clock, so we are going to do that in the morning at  
17 9 o'clock. So we will be in recess until 9 o'clock.  
18 Of course, you will go back to the Ramada. I let you  
19 go with the same instructions that I have at every  
20 break we have had, and I will see you in the morning  
21 at 9 o'clock. Ms. Abernathy, if I could see you just  
22 a second about your sister-in-law. Okay.

23 (ALL OF JURY PANEL LEAVES THE COURTROOM EXCEPT  
24 FOR JUROR MS. SUE ABERNATHY WHO APPROACHED THE BENCH  
25 FOR THE FOLLOWING WITH ONLY HER AND THE COURT  
26 PRESENT:)

27 BY THE COURT: Terry has not given me any  
28 further message. He was in the courtroom, but when  
29 he heard us go back to break, he went out. So I will

1 check with him, and if there is anything different, I  
2 will let you know.

3 BY MS. ABERNATHY: I appreciate it.

4 BY THE COURT: Okay.

5 (MS. ABERNATHY LEAVES THE COURTROOM.)

6 BY THE COURT: Court is adjourned until in the  
7 morning at 9 o'clock.

8 COURT WAS RECESSED FOR THE DAY ON OCTOBER 15,  
9 1997, AT 5:12 P.M.

10 (COURT REPORTER'S NOTE: BEFORE THE TRIAL BEGAN  
11 PROCEEDINGS ON THIS DATE, THE COURT RECEIVED A  
12 MESSAGE THROUGH A RELATIVE OF MS. SUE ABERNATHY'S  
13 THAT MS. ABERNATHY'S SISTER-IN-LAW WAS VERY ILL. THE  
14 COURT MET WITH ALL COUNSEL IN CHAMBERS BUT NOT ON THE  
15 RECORD AND INFORMED THEM OF THIS COMMUNICATION  
16 CONCERNING JUROR SUE ABERNATHY. ALL COUNSEL AGREED  
17 FOR THE COURT TO MEET WITH MS. ABERNATHY PRIVATELY IN  
18 CHAMBERS TO INFORM HER OF HER SISTER-IN-LAW'S ILLNESS  
19 AND TO GIVE HER THE OPPORTUNITY TO BE WITHDRAWN FROM  
20 THE JURY OR TO REMAIN. THIS WAS DONE, AND MS.  
21 ABERNATHY ELECTED TO REMAIN ON THE JURY AT THIS  
22 POINT.)  
23  
24  
25  
26  
27  
28  
29

1 TRIAL RESUMED ON THURSDAY, OCTOBER 16, 1997,  
2 SHORTLY BEFORE 9:00 A.M. IN CHAMBERS OUT OF THE  
3 PRESENCE OF THE JURY WITH THE COURT, ALL COUNSEL, THE  
4 DEFENDANT AND THE COURT REPORTER PRESENT:

5 BY MR. EVANS: Your Honor, comes now the State  
6 and moves for a Motion in Limine, and I would like to  
7 explain to the Court the reason for it before I  
8 actually make it. I was advised yesterday by  
9 opposing Counsel, John Gilmore, that they may intend  
10 to call a Charita, K H A R I T A, Baskin,  
11 B A S K I N. I was further advised that her  
12 testimony would be that a number of days before the  
13 Defendant called Bertha Tardy and it was found out  
14 that he was terminated, that Ms. Tardy had called his  
15 house and left word with his sister, this Clarita  
16 Baskin, that she wanted him to come back to work. I  
17 have got three different reasons that I would move in  
18 limine to exclude this witness.

19 The first reason is that she was not furnished  
20 on discovery and that I had no knowledge of her until  
21 yesterday. The second reason is that it would be  
22 hearsay, any statement that Ms. Tardy may have told  
23 her at that point in time. And the third reason is  
24 that it is not relevant.

25 BY MR. BILLY GILMORE: Your Honor, in response,  
26 of course, we only became aware recently of this  
27 particular witness. And of course, we also became  
28 aware of a second witness that Ms. Tardy had called  
29 we do not have here. We supplied Mr. Evans that

1 information yesterday and--

2 BY THE COURT: When did you become aware of it?

3 BY MR. JOHN GILMORE: We knew about the calls  
4 beforehand, but we did not realize that it was more  
5 than one sister that received the calls.

6 BY THE COURT: Well, when did you know about  
7 it?

8 BY MR. JOHN GILMORE: Yesterday.

9 BY THE COURT: That is the first you knew about  
10 the phone calls?

11 BY MR. JOHN GILMORE: No. We knew about the  
12 phone calls some several months back.

13 BY THE COURT: You knew who they were to?

14 BY MR. JOHN GILMORE: We knew who they were to,  
15 and we provided that name on the list, but I did not  
16 realize that it was two separate sisters. The one  
17 that is on the list is in Texas, and we are not able  
18 to get her here. It would have been the same  
19 testimony from either one, but they just had separate  
20 calls.

21 BY MR. BILLY GILMORE: And, Your Honor, it would  
22 be relevant to the case because the State has gone  
23 into great detail how he was fired, and this  
24 testimony will show that Ms. Tardy, in fact, on at  
25 least four accounts called requesting him to come  
26 back to work.

27 BY THE COURT: Why isn't it hearsay?

28 BY MR. JOHN GILMORE: It would be a present  
29 sense impression exception, her present sense of the

1 employee relationship.

2 BY MR. HORAN: Your Honor, it's worth noting  
3 this is the Defendant's--

4 BY MR. EVANS: --The Defendant himself is the  
5 one that made the statement that he was fired. So  
6 this would be apparently an attempt to impeach his  
7 own statement.

8 BY MR. JOHN GILMORE: He did not say he was  
9 fired. I believe the testimony on the stand was that  
10 he called back, and she said that she couldn't use  
11 him any more.

12 BY MR. HORAN: In order for that to be relevant,  
13 the Defendant is going to have to testify and deny  
14 making that statement which is on tape. It is not  
15 relevant until that point.

16 BY MR. BILLY GILMORE: Well, she doesn't  
17 necessarily have to quote what Ms. Tardy said, but  
18 she can basically say what the crust of the  
19 conversation was, what the connection was.

20 BY THE COURT: That is called hearsay.

21 BY MR. BILLY GILMORE: It goes under the  
22 exception.

23 BY THE COURT: Well, it might be under the  
24 exception, but it is still hearsay.

25 BY MR. JOHN GILMORE: Well, it's an exception to  
26 the hearsay rule.

27 BY THE COURT: Okay.

28 BY MR. HORAN: Present sense impression; is that  
29 what you are traveling under?

1 BY MR. JOHN GILMORE: Present sense impression.  
2 (Pause while the Court reads the Rules.)

3 BY MR. HORAN: Your Honor, the present sense  
4 impression by the Rule is like someone describing a  
5 car accident, something they saw and made a statement  
6 at that time.

7 BY THE COURT: That is my problem with it.

8 BY MR. HORAN: Plus they are trying to impeach a  
9 statement made by their client through this other  
10 testimony. It's just devoid of any relevancy or any  
11 indication of admissibility at all.

12 BY MR. EVANS: And whether she wanted him to  
13 work at some earlier time is obvious because she  
14 hired him at some point in time. The question was  
15 did she let him go, which he has given in his  
16 statement.

17 BY THE COURT: My idea is--

18 BY MR. BILLY GILMORE: --The State--

19 BY THE COURT: Excuse me.

20 BY MR. BILLY GILMORE: The State has constantly  
21 referred that he was fired. He was fired; he was  
22 fired.

23 BY MR. HORAN: Constantly?

24 BY MR. BILLY GILMORE: That's what we are  
25 putting in this testimony to show that at some time  
26 after this, he called in, I believe the following  
27 Tuesday, and asked did he still have a job. And she  
28 said no, because he hadn't been reliable at coming to  
29 work. But the State has just indicated he was



1 fired--

2 BY THE COURT: --And obviously he was fired and  
3 was not rehired, and she advanced him thirty dollars  
4 out of her own money but did not give him the rest of  
5 his check. He obviously was fired. In any event, I  
6 think it is hearsay, and I don't think the present  
7 sense impression exception is covered by this, so I  
8 grant the Motion in Limine. And y'all know how bad I  
9 hate to grant those.

10 BY MR. BILLY GILMORE: There is one other thing  
11 I would like to go into this morning. Of course, we  
12 came over early to talk to our witnesses, but we have  
13 been tied up in court, and we may need some  
14 additional time as we proceed on this morning as we  
15 line our witnesses up.

16 BY THE COURT: Well.

17 BY MR. BILLY GILMORE: And the other thing--

18 BY THE COURT: --Here is the problem I have got  
19 with that. I'm not going to unduly keep you from  
20 talking to your witnesses. You are entitled to do  
21 that. But gentlemen, I set this case six months down  
22 the road and provided deadlines of all the discovery  
23 would be furnished to you, and all this investigation  
24 could be made before the day of trial. You had at  
25 least three months since the last deadline to talk to  
26 all these people, and if you did not do it, you did  
27 it at your own jeopardy. I will allow you to have  
28 some conferences, but we are not going to delay this  
29 trial while y'all do your investigation today. We

1 are just not going to do it.

2 BY MR. BILLY GILMORE: And one other thing I  
3 want to object to at this point this morning. The  
4 State interfered with our witnesses while we were  
5 called in a few minutes ago. The investigator went  
6 in and more or less harassed one of our witnesses  
7 that we were interviewing at the time we were called  
8 in this chambers, and we don't want that to continue.

9 BY THE COURT: Well, what type of harassment?  
10 There is not going to be any harassment of any  
11 witness by any side. I can tell you that, Mr.  
12 Gilmore, right now.

13 BY MR. BILLY GILMORE: Well, basically, he went  
14 in and told them, "This is what you said and you  
15 better stick with it." You know, I don't think we  
16 need that.

17 BY THE COURT: Okay. I'm going to restrict  
18 discussions with witnesses from now on to be between  
19 the attorneys and the witnesses. That ought to cure  
20 that. That's the best I know how to do.

21 BY MR. BILLY GILMORE: Thank you, sir.

22 BY MR. HORAN: Assuming that occurred, Your  
23 Honor.

24 BY THE COURT: Well, I wasn't assuming  
25 anything. It's just a preventive--

26 BY MR. HORAN: --Yes, sir. I understand.

27 BY THE COURT: It's a preventive measure so that  
28 it won't happen, if it happened, that it won't happen  
29 any more. And if it didn't happen, that it won't

1                   happen. Okay?

2                   BY MR. BILLY GILMORE: Yes, sir.

3                   BY THE COURT: Okay. Y'all ready?

4                   BY MR. EVANS: Yes, sir.

5                   BY MR. BILLY GILMORE: Could we have another  
6 five minutes?

7                   BY THE COURT: Uh-hum.

8                   (FOLLOWING A BRIEF RECESS, COURT WAS DULY OPENED  
9 ON OCTOBER 16, 1997, WITH THE COURT, ALL ATTORNEYS,  
10 THE DEFENDANT, AND THE JURY ALL PRESENT FOR THE  
11 FOLLOWING:)

12                  BY THE COURT: Who will you have first?

13                  BY MR. BILLY GILMORE: Call Essie Ruth  
14 Campbell.

15                               **ESSIE RUTH CAMPBELL,**

16 a black female having been called to testify as a witness by  
17 the Defendant, having first been duly sworn by the Clerk,  
18 testified as follows, to-wit:

19                  BY THE COURT: State your name for the record.

20                  BY THE WITNESS: Essie Campbell.

21                  BY THE COURT: Ms. Campbell, you need to speak  
22 loud enough for the lady back there by that door to  
23 hear you. And it will help if you will speak into  
24 that little microphone.

25                  DIRECT EXAMINATION BY MR. BILLY GILMORE:

26                  Q. State your name again, please.

27                  A. Essie Campbell.

28                  Q. And Ms. Campbell, where do you live?

29                  A. I live at 314 Cage Street.

1 Q. Okay, you sound like you are a little hoarse?

2 A. Yes, sir.

3 Q. You might try to speak a little louder if you can,  
4 please.

5 A. Okay.

6 Q. You may lean toward that mike, and it might help you  
7 some. Okay, where do you live?

8 A. 314 Cage Street.

9 Q. And where is that?

10 A. In Winona.

11 Q. And how long have you lived in the Winona area?

12 A. All my life.

13 Q. Okay, and I'm not going to ask your age. Where are  
14 you employed?

15 A. Winona Manor.

16 Q. How long have you been employed there?

17 A. For seven years.

18 Q. What type work do you do?

19 A. I'm a nurse assistant.

20 Q. Okay, what are your duties comprised of? What do  
21 you do there?

22 A. Well, I bathe the folks, get the folks up for  
23 breakfast and lunch and everything.

24 Q. And what is your normal working hours?

25 A. 7:00 to 3:00.

26 Q. 7:00 in the morning to 3:00 in the afternoon?

27 A. Uh-huh.

28 Q. Okay. Now do you know Doyle Simpson?

29 A. Yes, I do.

1 Q. And how do you know him?

2 A. He is my brother.

3 Q. He is your brother?

4 A. Yes.

5 Q. Is he younger than you or older than you?

6 A. He is younger than I am.

7 Q. And I believe he lives there in the Winona area also?

8 A. Yes, sir.

9 Q. Now Ms. Campbell, I want to call your attention to  
10 the morning of July 16th, 1996. Do you remember where you were  
11 that particular morning?

12 A. I was at work.

13 Q. At work?

14 A. Yes, sir.

15 Q. And that was at where now?

16 A. Winona Manor.

17 Q. And that is a nursing home?

18 A. Yes, it is.

19 Q. Now I'm going to ask you if you saw Doyle Simpson  
20 that morning?

21 A. Yes. I saw his car that morning.

22 Q. Okay, and where did you see his car that morning?

23 A. It was going on 82.

24 Q. Okay, is that where the nursing home is located?

25 A. Yes, it is.

26 Q. All right, now for the benefit of the jury that has  
27 never been to Winona and not familiar with Winona, is that east  
28 of 51 Highway or west of 51 Highway?

29 A. (Pause) It's east.

1 Q. All right, let me clarify it. Is the main part of  
2 town on one side of the 55-- 51 highway, the business area of  
3 town?

4 A. It's on this side (Witness indicating.)

5 Q. Okay, I'm probably confusing you. Okay, is the  
6 nursing home between 51 Highway and Interstate 55?

7 A. Uh-huh.

8 Q. Okay. And in order to go downtown, would you have to  
9 cross 51 to go down to where the stores and the banks are?

10 A. Uh-huh.

11 Q. Okay. And I believe 51 runs north and south; is that  
12 right?

13 A. (Witness nods her head.)

14 Q. You have to speak with your mouth.

15 A. Yes.

16 Q. All right. Now you said you saw Doyle Simpson's car  
17 that morning. Who was driving Doyle Simpson's car?

18 A. He was.

19 Q. Doyle was driving?

20 A. Yes, sir.

21 Q. Okay. Now how far were you from him when he passed?

22 A. Okay, the nursing home is right off, you know; it's  
23 on 51 and, uh--

24 Q. How far is the nursing home from the street? Can  
25 you give us approximately how many feet, or can you look in the  
26 courtroom and see a distance?

27 A. Probably from here to the lady in that red or  
28 burgundy sitting back there; might not be that far.

29 Q. Okay, you need to speak a little louder, please,

1 ma'am.

2 A. The lady with the burgundy sweater on.

3 Q. The lady with the purple sweater; that is like two  
4 thirds of the courtroom?

5 A. Uh-hum.

6 Q. Would that be 30 feet maybe?

7 A. It might not be 30 feet.

8 Q. Okay. Now which way was your brother going that  
9 morning?

10 A. I saw him going, going up 51-- I mean 82.

11 Q. Okay, now so if we establish that 55 was west of the  
12 nursing home and 51 was east of the nursing home, would he be  
13 going east or west?

14 A. (No immediate response).

15 Q. Was he going towards 55 or 51?

16 A. He was going toward 55.

17 Q. 55, okay. Do you know if anybody was in the car with  
18 him?

19 A. No.

20 Q. You don't know?

21 A. (Witness shakes her head.)

22 Q. Now when did you see your brother going towards 55?

23 A. It was between 9:30 and 10:00 or something after  
24 10:00 because I was out there with a patient. But you know, I  
25 know it was between 9:30 and 10:00.

26 Q. Okay, now describe his car. What does it look like?

27 A. It is brown. It's a dark brown, and then it got a  
28 light looking brown on it.

29 Q. What you call a two tone brown?

1 A. Uh-huh.

2 Q. Is it normally a clean car or a dirty car?

3 A. Well, it's, he have it clean, you know. Dusty, you  
4 know, it was just dusty looking but wasn't really dirty.

5 Q. He stays with your mother out on Poor House Road?

6 A. No, she is not my mother.

7 Q. Oh, that is not your mother?

8 A. No, sir.

9 Q. But his mother?

10 A. Yes, sir.

11 Q. Y'all are half brother and sister?

12 A. Yes, sir.

13 Q. I'm sorry. But he stays out there with his mother?

14 A. Yes, sir.

15 Q. And that is out on a county, dusty road?

16 A. Yeah.

17 Q. Okay. Now how do you know that this was on that  
18 particular day that you saw him?

19 A. Because it was, it was because we had, we was getting  
20 ready for an activity on that day.

21 Q. Do you remember what activity it was?

22 A. No, I sho' don't.

23 Q. Well, let me ask you this. Did later on in that  
24 morning, did you hear about the incident down at Tardy's  
25 Furniture?

26 A. It was about 11 o'clock when I heard about it.

27 Q. About 11 o'clock?

28 A. Uh-huh.

29 Q. But it was the same day--



1 A. --yes, sir--

2 Q. --that you saw Doyle drive by the nursing home?

3 A. Yes, sir.

4 Q. Now is there any doubt in your mind that that was  
5 your brother that you saw pass there?

6 A. No, sir.

7 Q. Now do you know Robert Campbell?

8 A. Yes, sir.

9 Q. Who is Robert Campbell?

10 A. He is my brother.

11 Q. And where does he live?

12 A. Live in Louisiana.

13 Q. Did Doyle ever call you about making a request?

14 BY MR. EVANS: Your Honor, this is not proper.  
15 This would be hearsay.

16 BY MR. BILLY GILMORE: I will change it.

17 BY THE COURT: Okay.

18 BY MR. BILLY GILMORE:

19 Q. Did you ever make a call to your brother in New  
20 Orleans at the request of Doyle Simpson?

21 BY MR. EVANS: Same thing, Your Honor. We would  
22 object--

23 BY THE WITNESS:

24 A. --No, sir; I didn't.

25 BY THE COURT: Well, she can say whether she  
26 made the call. She just can't-- and she can say what  
27 she said. She just can't say what anybody else said.

28 BY MR. EVANS: Yes, sir.

29 BY MR. BILLY GILMORE:

1 Q. Did Doyle get you to call your--

2 BY MR. EVANS: --Your Honor, anything that-- she  
3 cannot testify what someone else told her. That is  
4 hearsay.

5 BY THE COURT: I understand that, and I'm not  
6 going to allow her to testify to that, but he hasn't  
7 asked her that question as far as I know.

8 BY MR. BILLY GILMORE: I am trying to find out  
9 whether or not she called her brother.

10 BY THE COURT: I thought that was the question--

11 BY MR. EVANS: --Well, he can ask that.

12 BY THE COURT: Huh?

13 BY MR. BILLY GILMORE: That's what I'm trying to  
14 do, Your Honor.

15 BY THE COURT: I know. I thought that was the  
16 question.

17 BY MR. BILLY GILMORE: It was.

18 BY THE COURT: Okay. You can ask that one.

19 BY MR. BILLY GILMORE:

20 Q. Did your brother, Doyle Simpson, request you to call  
21 your brother--

22 BY MR. EVANS: --Your Honor, that is exactly  
23 what the Court has ruled he can't ask. She can only  
24 answer what she did.

25 BY THE COURT: That's right.

26 BY MR. BILLY GILMORE:

27 Q. All right, did you call your brother, Robert  
28 Campbell, in New Orleans at the request of your brother Doyle  
29 Simpson?

1 BY MR. EVANS: I don't know what part of that he  
2 doesn't understand, Your Honor, but I'm going to  
3 object one more time.

4 BY THE COURT: I-- and you are correct, Mr.  
5 Evans, but it's so minute, I'm going to allow it. Go  
6 ahead.

7 BY MR. BILLY GILMORE:

8 Q. Do you understand my question?

9 A. No, sir. I didn't--

10 Q. --Okay, let me repeat it. It may be a little  
11 confusing. Did you call your brother, Robert Campbell, in New  
12 Orleans at the request of your brother Doyle Simpson?

13 A. No, sir.

14 Q. You did not?

15 A. No, sir.

16 BY MR. BILLY GILMORE: Okay. Court indulge me a  
17 moment.

18 (Defense Counsel confer.)

19 BY MR. BILLY GILMORE: Tender the witness, Your  
20 Honor.

21 CROSS-EXAMINATION BY MR. EVANS:

22 Q. Good morning, Ms. Campbell.

23 A. Good morning.

24 Q. Ms. Campbell, you say the car that you saw your  
25 brother driving was a two tone brown car?

26 A. Yes, sir.

27 Q. Would you describe it for the jury?

28 A. Now I don't know no makes of no cars or nothing.

29 Q. No, I'm talking about as far as the coloring. Which

1 part is what color?

2 A. Okay, the top part is dark brown like, and then it  
3 got a stripe a light brown.

4 Q. And how wide is that stripe in there?

5 A. It's not too wide. (Witness indicating.)

6 Q. And would that be about 12 inches or so?

7 A. (Witness indicating) I reckon so.

8 Q. Ma'am?

9 A. I reckon so. I'm not good at measuring.

10 Q. And you are sure that that is the color car that you  
11 saw go by?

12 A. Yes, sir.

13 Q. And the car that you are describing to this jury, you  
14 didn't see downtown around Tardy Furniture or anywhere in that  
15 area?

16 A. Oh, no, sir. I was at work. I couldn't leave my job  
17 and go downtown.

18 Q. All right, this wasn't anywhere close to downtown.  
19 This was out on Highway 82?

20 A. Now what you say?

21 Q. This was out on Highway 82; is that correct?

22 A. This is on 82.

23 Q. And the car that you saw was headed toward Interstate  
24 55?

25 A. Uh-huh.

26 Q. And you say you don't know how many people were in  
27 that car?

28 A. No.

29 BY MR. EVANS: Nothing further, Your Honor.

1 BY THE COURT: Redirect?

2 BY MR. BILLY GILMORE: Yes, Your Honor.

3 REDIRECT EXAMINATION BY MR. BILLY GILMORE:

4 Q. Ms. Campbell, do you know how long your brother Doyle  
5 Simpson has had that car?

6 A. No, sir.

7 Q. Was it a long time?

8 A. It has been a while, but it couldn't tell you how  
9 long.

10 Q. Okay. Would it be more than a year?

11 A. Yes, sir.

12 Q. I'm talking about would it be more than a year prior  
13 to that day you were talking about?

14 A. (Witness nods her head.)

15 Q. Several years?

16 A. I don't think it has been seven years.

17 Q. Several. I didn't say seven.

18 A. Several, uh-huh.

19 Q. Okay, but he's had it several years; more than two or  
20 three years?

21 A. Now he didn't have that that long, you know, because  
22 like I say, it has been a while. You know, he had it for a  
23 while. I couldn't--

24 Q. All right. But he did have that car on July 16th,  
25 1996?

26 A. Yes, sir.

27 Q. And that's the car you saw pass the nursing home?

28 A. Yes, sir.

29 Q. And the person driving that car was who?

1 A. Doyle Simpson.

2 Q. Okay, no doubt in your mind?

3 A. No, sir.

4 BY MR. GILMORE: No further questions.

5 BY THE COURT: Is she finally excused?

6 BY MR. BILLY GILMORE: Yes, Your Honor.

7 BY THE COURT: Ms. Campbell, you are free to  
8 go.

9 WITNESS EXCUSED.

10 BY THE COURT: Who will you have next?

11 BY MR. BILLY GILMORE: Roy Edward Harris.

12 ROY EDWARD HARRIS,

13 a black male called to testify as a witness by the Defendant,  
14 having first been duly sworn by the Clerk, testified as  
15 follows, to-wit:

16 BY MR. BILLY GILMORE: Your Honor, I may need a  
17 little leeway. This witness has a hearing problem.

18 BY THE COURT: Okay. One of the witnesses  
19 testified about him before, haven't they? Go ahead.

20 DIRECT EXAMINATION BY MR. BILLY GILMORE:

21 Q. Mr. Harris, can you hear me?

22 A. (Witness nods his head.)

23 Q. Okay, now you have will to talk with your mouth.  
24 What is your name?

25 A. (No response).

26 Q. Can you hear me?

27 A. I didn't quite get that.

28 Q. Have you got your hearing aid on?

29 A. (Witness nods his head.)

1 BY MR. BILLY GILMORE: Your Honor, may I get  
2 closer to the witness?

3 BY THE COURT: Yes, sir.

4 BY MR. BILLY GILMORE: I think he reads lips  
5 some too.

6 BY MR. BILLY GILMORE:

7 Q. Can you hear me now?

8 A. All right.

9 Q. All right, now I need you to talk into that  
10 microphone right in front of you. What is your name?

11 A. Uh-huh.

12 Q. What is your name?

13 A. Roy Edward Harris.

14 Q. And where do you live, Mr. Harris?

15 A. Winona.

16 Q. And how long have you lived in Winona?

17 A. About 17 years.

18 Q. All right, sir. Are you employed? Do you work  
19 anywhere?

20 A. No, sir. I don't work nowhere.

21 Q. Are you on disability?

22 A. That's right.

23 BY THE COURT: Mr. Harris, tell him he has got  
24 to answer in words.

25 BY MR. BILLY GILMORE:

26 Q. Speak loud into the microphone right here, okay?

27 A. All right.

28 Q. Speak loud, okay because we have problem hearing  
29 too. Okay? Now Mr. Harris, I want to call your attention to

1 July 16th, 1996. Do you remember that day?

2 A. Yes, sir.

3 Q. Okay, do you know a Clemmie Fleming?

4 A. Yes, sir. I know her.

5 Q. Okay, on that particular day did she get you to carry  
6 her uptown?

7 A. Well, she come over to the house and got me. She  
8 wanted to go pay her furniture note. So as we were going up  
9 there, we got there just about the place to go over the hill,  
10 and she said, Take me over to my mama's. So I turned right  
11 there and went down by the church.

12 Q. All right, let me slow you down just a little bit,  
13 Mr. Harris. What part of Winona in relation to the downtown  
14 stores; do you live north or south or east or west of the  
15 stores?

16 A. I believe it-- talking about--

17 Q. From the stores downtown, where do you live?

18 A. It was a left, talking about when I got to the  
19 church.

20 Q. No, sir. Do you live on the east side of the  
21 railroad tracks?

22 A. I don't quite understand you.

23 Q. Okay. Are you familiar with the railroad there in  
24 Winona?

25 A. I made a right right there.

26 Q. All right, did you cross the railroad to get to the  
27 store part of town?

28 A. Yes, sir.

29 Q. Okay. Now when you crossed the railroad track, were



1 you on Front Street?

2 A. That's right.

3 Q. Okay. Did you go all the way down Front Street to  
4 Tardy's Furniture Store?

5 A. No, sir. I didn't pass the furniture store.

6 Q. You didn't go past the furniture store?

7 A. No, sir.

8 Q. But I thought you said that you were carrying Clemmie  
9 to pay her furniture bill?

10 A. That's right. I was carrying her to pay her  
11 furniture bill, but before we got right there at that corner to  
12 turn to go up through there by the bank at the right there, she  
13 said, Take me over to mama's. I took a right there.

14 Q. All right, is that about two blocks above Tardy  
15 Furniture?

16 A. Right.

17 Q. So you turned; is that Summit Street?

18 A. That's right.

19 Q. Like going back out to 51 Highway?

20 A. That's right.

21 Q. Okay, is that close to the post office?

22 A. Yes, sir, right there at the post office--

23 BY MR. EVANS: --Your Honor--

24 BY MR. HORAN: --Mr. Gilmore needs to be sworn  
25 if he is going to testify--

26 BY THE WITNESS:

27 A. --I took a right--a left--

28 BY MR. BILLY GILMORE: --Your Honor, I ask for  
29 leeway--

1 BY MR. EVANS: --There is difference in him  
2 being able to hear and him leading the witness all  
3 over the place.

4 BY THE COURT: That is true. I'm going to give  
5 you some leeway, but you can't suggest answers to him  
6 now. You are going to have to let him testify.

7 BY MR. BILLY GILMORE: Okay.

8 BY MR. BILLY GILMORE:

9 Q. Where did you turn off of Front Street? Do you know  
10 what the name of the street was?

11 A. Well, she said she wanted to go to her mama's. I  
12 didn't want to go through all the red light and the traffic  
13 because generally I didn't have no license, and I didn't want  
14 to get caught or nothing. I just take the nearest way out.

15 Q. All right, so which way did you go? What street did  
16 you turn on?

17 A. I don't know the name of the streets, but I turned  
18 right there at the church to the left, and I went down the  
19 hill. And just as I started up the hill to the next four way  
20 stop on the top of the hill was, that last drive was coming out  
21 from the left there--

22 Q. --All right, let me stop you. Do you know what  
23 street is at the four way stop?

24 A. That's right.

25 Q. What is the name of that street?

26 A. Well, I stopped at the four way stop up there, and I  
27 kept straight across.

28 Q. All right, do you know the name of that street that  
29 intersects there at that four way stop?

1 A. No, sir. I don't.

2 Q. Okay. Is it one that is right in town or is it away  
3 from town, the business part of town?

4 A. I still don't understand.

5 Q. All right, sir. Is it more than one four way stop in  
6 Winona?

7 A. Uh-huh.

8 Q. All right, where is the first four way stop you came  
9 to that morning?

10 A. The first four way stop?

11 Q. Yes.

12 A. Right there at the post office.

13 Q. At the post office.

14 A. Right there beside the church.

15 Q. Okay, is that down by Tardy Furniture, or is that  
16 farther up?

17 A. Uh, I don't know too much about the names or nothing  
18 like that.

19 Q. All right, sir. Well, let me ask you this. How many  
20 blocks, city blocks between Tardy's Furniture and this four way  
21 stop you are describing?

22 A. From, talking about from the furniture store?

23 Q. Yes.

24 A. About two, I believe about two.

25 Q. About two blocks?

26 A. Yeah.

27 Q. Okay.

28 BY THE COURT: Let me see y'all up here just a  
29 second.

1 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
2 THE JURY AS FOLLOWS:)

3 BY THE COURT: You do it how you want to do it,  
4 but I would make a suggestion. Why don't you just  
5 let him tell his story, and then you can come back  
6 and ask him about the pieces in it. That might be  
7 better than this.

8 BY MR. BILLY GILMORE: That might be better.

9 BY MR. HORAN: I kind of like the way it's  
10 going, Your Honor.

11 BY MR. BILLY GILMORE: We will try.

12 END BENCH CONFERENCE.

13 BY MR. BILLY GILMORE: May I proceed, Your  
14 Honor.

15 BY MR. BILLY GILMORE:

16 Q. All right, Mr. Harris, if you would, just tell us  
17 from the time you left home what you did in your own words, and  
18 I will come back and talk to you about it, okay?

19 A. (No response).

20 Q. Do you understand my question?

21 A. No, sir.

22 Q. All right, just tell me what you did that morning,  
23 where you went, where you turned, where you stopped. Okay?  
24 Just tell me that.

25 A. All right. Well, when I left with Clemmie, we turned  
26 the first right right there to cross the railroad. All right,  
27 we went down Front Street, and I was taking her to pay her  
28 furniture note. But she said, Take me over to my mama's. So I  
29 turned right there at the corner, and I went down there to the

1 end of the church at the four way stop. I took a left. I went  
2 all the way up that street to the next four way stop. And the  
3 fellow that come out running across the road, and he went to  
4 the right, and he was steady running. And so I started to,  
5 going to pick him up, and I say, "I don't believe I know him."  
6 Clemmie say, "I know him." So I didn't pay too much attention  
7 to him. I just looked back in the mirror. So I went on over  
8 the hill. I was driving slow. I went down to 407 Highway. I  
9 took a right there, and I come back into 51. And when I was  
10 coming up the road to 51 there, the same fellow that I seen run  
11 out in front of the road was coming down Silver Street  
12 running. And I said the fellow must have didn't know where he  
13 was going or something, and so I went to the mason hall at the  
14 church, at the mason hall up there, and I took another left and  
15 took Clemmie over to her mother's house. And I turned around  
16 and went home.

17 Q. Okay. Now where were you in relation to your car  
18 when you first saw the man run across the street? Where were  
19 you? What street and whereabouts on that street?

20 A. Talking about when I first seen him cross the road?  
21 I was just about to, to the next street from the second four  
22 way stop.

23 Q. Okay, now do you remember a pink house that was torn  
24 down?

25 BY MR. HORAN: Your Honor, Your Honor, "Do you  
26 remember?" I have to object to that.

27 BY THE COURT: Sustained. That is leading.

28 BY MR. HORAN: He has handled any direct  
29 questions so far.

1                   BY THE COURT: Sustained.

2 BY MR. BILLY GILMORE:

3           Q. Had you stopped at the second four way stop when you  
4 saw the man?

5           A. I say he was, he come out from that road, and he got  
6 on the right running up the side of the street. So I started  
7 to pick him up, but that was before I got to the four way  
8 stop. Then I went up to the four way stop, and I stopped, and  
9 I went over the hill to 407.

10          Q. Okay. Now how far is it from there on down to 407  
11 Highway?

12          A. From the four way stop?

13          Q. Uh-huh, the second four way stop.

14          A. It may be about, it's not about, it's not a quarter  
15 of a mile.

16          Q. A quarter of a mile. Okay, and from four way, from  
17 407 back up to where you stopped, how far would that be if you  
18 were driving around?

19          A. Yes, sir. I took a right there on 51.

20          Q. How far would it be from 407 where you came out to  
21 where you went around and stopped? About how far? How many  
22 miles or how many feet?

23          A. I don't know. I can't judge about no feets or  
24 nothing. It about, it may be about a quarter of a mile. It  
25 might, about a quarter of a mile from the second four way stop  
26 to the 407.

27          Q. All right. So how far is it from where you came out  
28 on 407 back around to where you stopped at the church or the  
29 masonic hall you referred to?

1 A. It may be about, probably a mile; I don't know.

2 Q. A mile?

3 A. Something like that; I don't know. I never-- it was  
4 just, it's a good piece from the four way stop and you get to  
5 407, and then you have got to come back to 51, and then you go  
6 back up north to the church. That's almost to Junior Food  
7 Market.

8 Q. Let me ask you this. Did you ever go in front of  
9 Tardy Furniture that morning?

10 A. (Witness shakes his head.)

11 Q. You have to speak with your mouth. Did you ever go  
12 by Tardy Furniture that morning?

13 A. No, sir. I sho' didn't.

14 Q. Okay. The street that you are referring to you  
15 turned, would that be a block behind Tardy Furniture?

16 A. No, sir. Up on the hill.

17 Q. Well, would it be two blocks over?

18 A. That's right.

19 Q. And that will be behind Tardy Furniture?

20 A. That's down from the church, talking about the way I  
21 went now.

22 Q. Would that be two blocks over behind Tardy though?

23 A. Behind the furniture?

24 Q. Uh-huh.

25 A. I imagine, right.

26 Q. Two blocks? Okay.

27 BY MR. BILLY GILMORE: Court indulge me.

28 (Defense Counsel confer.)

29 BY MR. BILLY GILMORE:

1 Q. Mr. Harris, the man you said running across the  
2 street, what kind of clothes did he have on?

3 A. He had on, I don't remember the pants, but the shirt  
4 that he was wearing, it was a white T-shirt and a bebop cap.

5 Q. Now a lot of people may not know what a bebop cap  
6 is. Would you describe it to me?

7 A. Well, it's the ones that you take and you can let it  
8 up, and then it got a button right here on the hood of it to  
9 pull it down and button it, you know. And then it will be  
10 lower or either you unbutton it and let it up.

11 Q. Do you know what color it was?

12 A. I just can't, just exactly to describe it to you, but  
13 if I seen it again, I could tell you, the one, like the one he  
14 had--

15 Q. --Was it a solid color or striped or plaid or--

16 A. It was some kind of checkered looking.

17 Q. Checkered?

18 A. Yeah, cap.

19 Q. All right. Did this man have on a jacket?

20 A. No, sir. Sho' didn't.

21 Q. More specifically, did he have on a baseball jacket?

22 BY MR. HORAN: Your Honor, I object to that.

23 BY THE COURT: Sustained. He has answered the  
24 question.

25 BY MR. BILLY GILMORE:

26 Q. Did not have on a jacket?

27 A. Nothing but a white T-shirt and a checked bebop cap.

28 BY MR. BILLY GILMORE: Tender the witness.

29 BY MR. HORAN: May I approach, Your Honor?



1 BY THE COURT: Yes, sir.

2 CROSS-EXAMINATION BY MR. HORAN:

3 Q. Mr. Harris--

4 BY THE COURT: And don't get between him and the  
5 jury.

6 BY MR. HORAN: Yes, sir. I was trying to let  
7 him face that way.

8 BY MR. HORAN:

9 Q. Mr. Harris, my name is Kevin Horan. I work for Doug  
10 Evans, that man sitting over there. I have got a few questions  
11 for you, okay?

12 A. (No response).

13 Q. Y'all saw this man running, according to your  
14 testimony, the first time on Church Street; right?

15 A. That's right.

16 Q. And that is a block or a block and a half behind  
17 Tardy Furniture; right?

18 A. Talking about the man that--

19 Q. --Church Street is what, a block, really a block and  
20 a half. It's a short block then a full block behind Tardy;  
21 right?

22 A. That's right.

23 BY THE COURT: All right, now we have got a  
24 problem with Linda. You are going to have to stand  
25 back just a little bit. He has got to answer with  
26 words, so she can take it down.

27 BY MR. HORAN: All right. Yes, sir.

28 BY MR. HORAN:

29 Q. And this man that was running was running away from

1 the area of Tardy Furniture, wasn't he?

2 A. I don't know where he was running from, but all I  
3 know he was running.

4 Q. From that direction?

5 A. From that direction.

6 Q. And you didn't know who he was, did you?

7 A. I never didn't have seen him before.

8 Q. But Clemmie Fleming identified him, didn't she?

9 A. (Witness nods his head.)

10 Q. As who?

11 A. (Witness nods his head.)

12 Q. Who did she say that was running away from the store  
13 when she was in your vehicle? Who did she say it was?

14 BY MR. BILLY GILMORE: Your Honor, I'm going to  
15 object--

16 BY THE WITNESS:

17 A. --She-- I don't even know the fellow's name--

18 BY MR. BILLY GILMORE: --to Counsel making a  
19 statement about running away from the store. There  
20 has been no testimony about him running away from a  
21 store.

22 BY THE WITNESS:

23 A. --But she said it was some--

24 Q. Who did she say--

25 BY THE COURT: Overruled.

26 BY MR. HORAN:

27 Q. Who did she identify running away from the store?

28 BY THE COURT: Well, he is right now. He hasn't  
29 testified to that.

1 BY MR. HORAN: All right.

2 BY THE COURT: Rephrase your question.

3 BY MR. HORAN:

4 Q. Who did she identify on Church Street? Who did  
5 Clemmie Fleming identify--

6 A. --Oh, she said it was something, Curtis something; I  
7 don't know.

8 Q. Curtis Flowers?

9 A. I don't, I couldn't, I didn't have my hearing aid  
10 on. I couldn't hear.

11 Q. Okay, do you remember talking to John Johnson with my  
12 office? Do you remember talking to John Johnson from Winona?  
13 Do you know Mr. Johnson?

14 A. (Witness nods his head.)

15 Q. Do you remember talking to him? Do you remember  
16 talking to Mr. Johnson?

17 A. (Witness nods his head.)

18 Q. Mr. Johnson asked you, "Well, over there on Church  
19 Street was anybody mentioned, anybody called, anybody's name  
20 called?" You said, "She said, There goes Curtis Flowers." Do  
21 you remember telling Mr. Johnson that?

22 A. I said I remember she said something like that.

23 Q. Okay. "Did you see him?" "I seen somebody, but I  
24 didn't know who he was." And at that time you did not give Mr.  
25 Johnson the same description that you gave Mr. Gilmore here  
26 today, did you? You didn't tell Mr. Johnson when you gave this  
27 statement that, what the man was wearing because you said you  
28 didn't see him that well; right?

29 A. --I didn't see him that well?--

1 BY MR. BILLY GILMORE: (Talking at same time)  
2 --Your Honor, I'm going to object. This is  
3 argumentative.

4 BY MR. HORAN: It's not argumentative.

5 BY THE COURT: Well, no, it's not argumentative,  
6 but you have got to ask one question at a time.

7 BY MR. HORAN:

8 Q. You didn't give Mr. Johnson a description of what the  
9 man had on when he talked to you on May of this year, did you?

10 A. Same thing.

11 Q. You did not give him a description, did you?

12 A. Talking about with--

13 Q. What had he on?

14 A. No, sir. I didn't give him that. He never did ask  
15 me. He said I didn't have to identify him.

16 Q. And Clemmie told you-- you looked in your rear view  
17 mirror, and she thought you were going to pick him up--

18 BY MR. BILLY GILMORE: I'm going to object to  
19 hearsay, Your Honor.

20 BY MR. HORAN: I don't believe so, Your Honor.  
21 This is a statement made, one of identification after  
22 it had been perceived by Ms. Fleming and certainly  
23 admissible--

24 BY THE COURT: --Well, I don't think you asked  
25 for a statement necessarily anyhow. Go ahead.

26 BY MR. HORAN:

27 Q. Did Ms. Fleming identify the man running as Curtis  
28 Flowers to you?

29 A. That's what she, that's what I remember her saying.

1 Q. And this is the day of the murders, that morning on  
2 Church Street, two blocks from behind Tardy's, she identified  
3 Curtis Flowers to you, didn't she?

4 A. That's right.

5 Q. Do you remember Mr. Johnson asking you, "That's  
6 Church Street." You are giving him a description. "That is  
7 Church Street that comes down by the post office." And he  
8 specifically asked you, "But you did not go downtown Front  
9 Street, like in front of Tardy Furniture store?" Do you  
10 remember what you told him?

11 A. (No response).

12 Q. Do you remember telling Mr. Johnson that "I went  
13 downtown Front Street"? Do you remember telling Mr. Johnson  
14 that?

15 A. That's right.

16 Q. Downtown Front Street?

17 A. That's right. But I told him I turned at the corner  
18 though.

19 Q. He specifically asked you, "That is Church Street  
20 that comes from the post office." "But you didn't" -- he asked  
21 you, "You did not go downtown Front Street, like in front of  
22 Tardy Furniture?" "Yes, sir. I went downtown Front Street."  
23 Do you remember making that statement?

24 A. (Witness shakes his head.) What I remember telling  
25 Mr. Johnson and me and him and the police got in the car--

26 Q. --First of all--

27 (Everyone talks at once.)

28 BY MR. BILLY GILMORE: --Your Honor--

29 A. --and I showed him which way--

1 Q. --admit or deny making the statement--

2 BY THE COURT: --No, no. He can-- no, let him  
3 answer--

4 BY THE WITNESS:

5 A. --I showed him which way I went.

6 Q. You showed him?

7 A. I showed him.

8 Q. But you told him you went to downtown Front Street?

9 A. I didn't show him by the furniture store.

10 Q. Mr. Harris, would you read that right there. That is  
11 Mr. Johnson's statement. Read what you told Mr. Johnson right  
12 there.

13 A. I can't read.

14 Q. Okay. I will read it to you. I am sorry. "That is  
15 Church Street that comes down through by the post office. But  
16 you didn't go downtown Front Street like in front of Tardy  
17 Furniture?" "Yes, sir. I went downtown Front Street." Do you  
18 remember making that statement?

19 A. Well, Front Street, I don't know what people call  
20 Front Street, but what I call Front Street is just as you cross  
21 the railroad track and you are going just like you are going  
22 toward the furniture store, but I took a right before I got to  
23 the furniture store.

24 Q. And then went down and hit Church? You went down and  
25 hit Church Street?

26 A. Right, when--

27 Q. --and that's when you saw the individual that she  
28 identified as Curtis Flowers?

29 A. And took a left, and took a left there.

1 Q. Going south?

2 A. (Witness nods his head.)

3 BY MR. HORAN: Nothing further, Your Honor.

4 BY MR. BILLY GILMORE: No further questions,  
5 Your Honor.

6 BY THE COURT: Is he finally excused?

7 BY MR. BILLY GILMORE: Yes, Your Honor.

8 BY THE COURT: Yes, sir; you are free to go.  
9 You can go home.

10 WITNESS EXCUSED.

11 BY THE COURT: Who do you have next?

12 BY MR. BILLY GILMORE: Timothy Haymore.

13 BY MR. EVANS: Your Honor, we are going to need  
14 to be heard on this witness. There is a motion that  
15 needs to be disposed of.

16 BY THE COURT: Okay. Ladies and gentlemen, I  
17 have got to hear this matter in chambers. I will  
18 give you about a ten minute break, and we will start  
19 right back.

20 (THE COURT, ALL COUNSEL, THE DEFENDANT, AND THE  
21 COURT REPORTER WENT TO CHAMBERS OUT OF THE PRESENCE  
22 OF THE JURY FOR THE FOLLOWING:)

23 BY MR. EVANS: Your Honor, this next witness  
24 that has been called is Timothy Haymore. Just so the  
25 Court will kind of be familiar with what is going on,  
26 this name has been furnished to us in discovery. We  
27 took a statement from him. His statement was very  
28 simple, that the Defendant had asked him to lie for  
29 him and make a statement that Veal, the witness that

1 testified yesterday, had made up the statement about  
2 the Defendant admitting to him killing these four  
3 people. Yesterday for the first time this witness  
4 has made a statement that what he told John Johnson  
5 and Ricky Banks was a lie, but in fact, that Veal had  
6 told him that he lied.

7 At this point for the Defense to put him on the  
8 stand and attempt to elicit that testimony would be  
9 improper because a proper predicate had not been laid  
10 for him to impeach Veal, and we would move that he  
11 not be allowed to take the stand and testify to an  
12 impeachment of Veal because a proper predicate has  
13 not been laid.

14 BY THE COURT: In what manner?

15 BY MR. EVANS: In any manner that would allow  
16 the impeachment of that statement.

17 BY MR. BILLY GILMORE: Your Honor, we talked  
18 with this witness the first time this morning.

19 BY MR. HORAN: It's funny; they subpoenaed him  
20 without talking to him.

21 BY MR. EVANS: Yeah, it is.

22 BY THE COURT: Well, you know that--

23 BY MR. BILLY GILMORE: --You can believe that or  
24 not.

25 BY THE COURT: Well, I mean it doesn't matter  
26 whether I believe it. Here is the Court's problem  
27 with that is that falls on deaf ears. I mean if you  
28 didn't, that is your fault. So I don't care, I mean  
29 from the standpoint of -- I mean that just doesn't



1 make any difference to me. If you waited until the  
2 last minute to talk to him, you just took your chance  
3 on that.

4 BY MR. BILLY GILMORE: Well, we want to put him  
5 on the stand. We called him.

6 BY THE COURT: Okay, but why don't you address  
7 what his objection is.

8 BY MR. BILLY GILMORE: Well, Your Honor, I'm not  
9 aware of what was said or done yesterday. I have  
10 made my objections, I believe, about investigators  
11 going and interfering with our witnesses--

12 BY MR. EVANS: --This has nothing to do with my  
13 motion, Your Honor.

14 BY THE COURT: That is not what he is talking  
15 about. I want to know what you -- to address his  
16 objection. I guess you have got no objection to him  
17 testifying other than to saying that Veal told him  
18 that--

19 BY MR. EVANS: --correct, Your Honor.

20 BY THE COURT: --that it was a lie?

21 BY MR. EVANS: Correct. We would only object to  
22 him being asked any questions about what Veal told  
23 him because a proper predicate has not been laid.

24 BY MR. HORAN: We would also object to him  
25 testifying that he didn't hear Mr. Flowers say  
26 anything like what Veal has testified to. There is a  
27 case on that.

28 BY THE COURT: Do what?

29 BY MR. HORAN: If he says, I didn't hear Curtis

1 Flowers say the things that Veal said he said because  
2 he can't, basically it's inadmissible. He can't say  
3 that someone didn't say something. He has to testify  
4 that someone did say something. I don't anticipate  
5 that is going to be the case, but we don't know.

6 BY THE COURT: Well, he can lay the predicate  
7 for that. If he can lay the predicate they were all  
8 in the same cell during all this relevant period of  
9 time and he hadn't ever heard such a conversation,  
10 I'm going to let him testify to that. I don't care  
11 what the case says.

12 BY MR. BILLY GILMORE: You are talking about a  
13 conversation of what Veal said?

14 BY THE COURT: No, you have got to listen what  
15 I'm saying now. I don't know what this guy is going  
16 to say, what you are going to put him on. Nobody has  
17 addressed his objection yet. But in relation to if  
18 he is going to say - and y'all need to present these  
19 things to me one at a time; I am too slow to do them  
20 all multiple. One question at a time, Mr. Horan, all  
21 right?

22 BY MR. HORAN: Thank you, Your Honor. I will  
23 try.

24 BY THE COURT: But let me just address that.  
25 What I'm saying about that is if you can establish  
26 that he was present at the time that statement was  
27 allegedly made between, the conversation between Veal  
28 and Flowers was allegedly took place, which is, if  
29 you can establish that he was present during that

1 time, then I will let him testify that he didn't hear  
2 such a statement, that nothing took place like that  
3 in his presence. But you have to establish, you have  
4 to establish that he was there at that particular  
5 time. Now you may or may not can do that. As I  
6 recall the testimony--

7 BY MR. HORAN: --I don't think that he can, but  
8 I wanted to bring it up.

9 BY THE COURT: Well, I mean I don't know that,  
10 but the only testimony that I remember that has been  
11 in is that it took place at 4 o'clock in the morning  
12 while they were playing--

13 BY MR. HORAN: Solitaire.

14 BY THE COURT: No, it wasn't.

15 BY MR. EVANS: Dominoes.

16 BY THE COURT: Dominoes. Solitaire is on  
17 Hoskins or Hawkins.

18 BY MR. BILLY GILMORE: Hawkins.

19 BY THE COURT: Hawkins. And I don't recall that  
20 he stated a date. I recall him saying that it was  
21 while he was in jail over there, and it was 4 o'clock  
22 one morning. That's what I recall. Anyhow, if you  
23 can, you are going to have to lay the predicate to  
24 get that in because it's not relevant if he didn't  
25 hear them make the conversation three days before  
26 that took place. That's why I am ruling that way.

27 Now let's go back to the statement that you are  
28 talking about. Give it to me again.

29 BY MR. EVANS: All right, what I anticipate is

1           that the Defense is calling this witness to attempt  
2           to impeach Veal by saying that Veal told this witness  
3           that it did not, in fact, happen. It would be  
4           improper impeachment at this point to even ask the  
5           witness what Veal said because the proper predicate  
6           has not been laid.

7           **BY THE COURT:** Why isn't it hearsay.

8           **BY MR. EVANS:** Well, it is also hearsay, but I  
9           think that is just one particular part.

10          **BY MR. JOHN GILMORE:** It could fall under the  
11          exception of a statement against interest.

12          **BY MR. EVANS:** I think clearly it would be  
13          hearsay.

14          **BY MR. JOHN GILMORE:** If he said that he was  
15          going to lie, I mean that would be a statement  
16          against his interest.

17          **BY MR. HORAN:** That is not what he is saying.  
18          He is saying he didn't make the statement, that the  
19          Defendant didn't make the statement.

20          **BY MR. EVANS:** Which isn't a statement against  
21          his interest.

22          **BY MR. BILLY GILMORE:** But at this point what we  
23          are concerned about, Your Honor, is the fact that  
24          Veal made a statement directly to this witness that  
25          he intended on fabricating some statement that would  
26          get him out of jail.

27          **BY MR. EVANS:** Which if he had laid a predicate,  
28          he might possibly be able to ask that, but there was  
29          no predicate laid for this.

1 BY MR. BILLY GILMORE: Of course, we are able to  
2 impeach the State's witnesses.

3 BY MR. HORAN: Lay a predicate to impeach a  
4 witness, right.

5 BY MR. EVANS: That's right. The Rules are  
6 clear.

7 BY MR. HORAN: 613. And it would still be  
8 hearsay.

9 (Pause while Court reads.)

10 BY THE COURT: What do you say-- you say 613.  
11 You are talking about 613 (b)?

12 BY MR. HORAN: He hasn't given the witness an  
13 opportunity to admit or deny the statement.

14 BY THE COURT: Isn't 613 (b) talking about the  
15 one that is on the stand?

16 BY MR. HORAN: It's got-- you can't impeach  
17 anybody unless it's their particular-- they have the  
18 opportunity-- he has to have given him the  
19 opportunity, that being Veal, to admit or deny that  
20 he made the statement to Haymore. First, before he  
21 gets to that point, he has got to get through the  
22 hearsay problem.

23 BY THE COURT: I understand that.

24 BY MR. HORAN: He has got to have Veal explain,  
25 admit that statement. If he admits that statement,  
26 it has no impeachment value. If he denies the  
27 statement, Haymore comes on. That is the predicate.

28 BY THE COURT: I think that is right. I don't  
29 think he can testify until the predicate has been

1           laid.

2           BY MR. EVANS: Your Honor.

3           (Mr. Evans handed the Court a case; long pause  
4 while Court reads.)

5           BY THE COURT: What is this witness' name?

6           BY MR. BILLY GILMORE: Timothy Haymore.

7           BY THE COURT: How long have y'all known about  
8 Timothy Haymore?

9           BY MR. BILLY GILMORE: Your Honor, I believe we  
10 supplied that name to the State. We became aware of  
11 it about the time, I believe, we were in Winona on  
12 some motions. I believe the State's investigator  
13 went that day, if I'm not mistaken, and interviewed  
14 that witness.

15          BY THE COURT: When did y'all interview him?

16          BY MR. BILLY GILMORE: This morning.

17          BY THE COURT: Okay.

18          BY MR. BILLY GILMORE: But, Your Honor, I might  
19 add this--

20          BY THE COURT: --Let me for the record -- we  
21 heard those motions-- I don't know; do y'all recall  
22 when they were? Back in the summer. It was two or  
23 three months ago. Well, it wasn't three months--

24          BY MR. HORAN: --July 1, we came over here. We  
25 came over here July 1.

26          BY MR. EVANS: About the middle of July when we  
27 met back in Winona.

28          BY THE COURT: Was it at Winona that we heard  
29 this or was--

1 BY MR. EVANS: --No, sir.

2 BY THE COURT: --up here.

3 BY MR. HORAN: They discovered--

4 BY MR. EVANS: --about the first part of July--

5 BY THE COURT: --We had the hearing on the  
6 motions up here - the Court doesn't recall except  
7 for the fact it was either the last of June or the  
8 first--

9 BY MR. HORAN: --It was the first day of July.

10 BY THE COURT: Yeah, okay, right there. And you  
11 are saying that is the day that y'all became aware of  
12 him, or you furnished him to the State. Is that  
13 correct?

14 BY MR. BILLY GILMORE: I believe so, Your  
15 Honor.

16 BY THE COURT: And y'all have not talked to  
17 him--

18 BY MR. BILLY GILMORE: --We have had  
19 communications through third parties with him because  
20 he--

21 BY THE COURT: But have y'all have not talked to  
22 him until today?

23 BY MR. BILLY GILMORE: Not personally because he  
24 has been an inmate with the MDOC. He was at  
25 Greenwood; we went to Rankin; now he is at Holly  
26 Springs. Now I would say this. I feel like we have  
27 laid the proper predicate on this witness because  
28 when Mr. Veal was testifying, we went into the fact  
29 why he got out so early; did he cut a deal, you

1 know. We raised that issue.

2 BY MR. HORAN: Still got--

3 BY MR. BILLY GILMORE: I mean that is the proper  
4 predicate. I mean we showed right there that it was  
5 lying to cut a deal to get out. The proper predicate  
6 is lain.

7 BY MR. HORAN: But his statement about anything,  
8 nothing about what he said to Haymore, no predicate  
9 has been laid.

10 BY THE COURT: For the statement, has not. You  
11 may have laid the predicate to come back and attack  
12 him on whether the deal was made. In other words, if  
13 you have got somebody that will say oh, yeah, the  
14 deal was made; then you might can get that in. We  
15 are talking about the statement now.

16 BY MR. BILLY GILMORE: I think we would be  
17 entitled under that, Your Honor, to show--

18 BY MR. HORAN: --That is stretching it.

19 BY MR. BILLY GILMORE: --what Veal said to this  
20 witness.

21 BY MR. HORAN: How?

22 BY MR. BILLY GILMORE: That is one of the  
23 exceptions.

24 BY THE COURT: Well, first, the Court finds that  
25 the Defense has known of this witness since July the  
26 1st at least, has known where he is, and he is  
27 subject to a Court order. The Court could at any  
28 time have produced him for examination if, in fact,  
29 the Defendant, the Defense Counsel could not-- in



1 other words, if you had a problem with getting a hold  
2 of him, all you had to do was get an order from me,  
3 and I would have produced him for you at any of the  
4 subsequent hearings that we have had. You elected to  
5 do that. You elected not to do that and elected to  
6 talk to him only today. This is after you agreed to  
7 excuse Veal as a witness. Everybody agreed that he  
8 be released from the subpoena and be excused.

9 BY MR. BILLY GILMORE: --Well, Your Honor--

10 BY THE COURT: --and the predicate has not been  
11 laid to impeach the statement made by him by a  
12 statement that he might have made to this particular  
13 witness. I think Harris v. State applies, and I'm  
14 not going to allow it.

15 BY MR. BILLY GILMORE: Your Honor, at this time  
16 then we would move that a subpoena instanter be  
17 issued for Mr. Veal, that the Sheriff be directed to  
18 transport him here that we may put him on the stand  
19 as a witness. I think we have that right.

20 BY THE COURT: What you have got is an  
21 obligation to talk to these folks before today.

22 BY MR. HORAN: Your Honor, can I say this for  
23 the record? Mr. Haymore was served yesterday. My  
24 understanding, they had 25 blank subpoenas issued,  
25 and I think the record will reflect that. And I  
26 assume they haven't served them all. Mr. Veal was  
27 present, took the stand, subject to cross-  
28 examination, available for them to interview.

29 BY MR. EVANS: And they released him and told

1 the Court that he was released.

2 BY MR. HORAN: And they had blank subpoenas  
3 served yesterday on Mr. Haymore. They could have  
4 handed Mr. Veal one.

5 BY THE COURT: All right, here is what the  
6 ruling--

7 BY MR. BILLY GILMORE: --Your Honor, I may-- let  
8 me put this in the record if you don't mind. We  
9 attempted to interview Mr. Haymore yesterday. We  
10 were not allowed to interview him.

11 BY THE COURT: You never told the Court that.  
12 Since July the 1st or whenever it was you knew him,  
13 since you knew about him, since July the 1st, all you  
14 had to do -- I had everybody y'all have asked me to  
15 do in that regard, I have done from day one in this  
16 case. All you had to do if you were having problems  
17 with that, you ought to address it to me, and I would  
18 have seen that it got done. But you elected not to  
19 do that. And so I can't, you know, that is not my  
20 fault.

21 I am going to do this. I am going to issue the  
22 instanter subpoena right now. But the case is not  
23 going to be delayed if he is not here by the time  
24 y'all get ready to rest. I mean you put yourself in  
25 this position, and you will just have to live with  
26 it. If you can get him here by the time we are ready  
27 to--

28 BY MR. BILLY GILMORE: --well--

29 BY THE COURT: --move forward with the case,

1           then that is fine. But he was here. All this could  
2           have been done before today. And not only that, Mr.  
3           Veal, you agreed for him to be excused, finally  
4           excused, and you also at that time had a subpoena,  
5           Mr. Horan said, which you could have subpoenaed him.  
6           If you had, he would have been here.

7           BY MR. BILLY GILMORE: Well, at that point, Your  
8           Honor, we took the attitude that the proper predicate  
9           had been lain for this witness.

10          BY THE COURT: Well, you were wrong.

11          BY MR. BILLY GILMORE: And may I ask then that--

12          BY THE COURT: --in my humble opinion.

13          BY MR. BILLY GILMORE: May I ask that the  
14          Sheriff of Leflore County be immediately called  
15          rather than be a delay?

16          BY THE COURT: Well, there are two of y'all.  
17          One of y'all go tend to getting a subpoena issued  
18          while the other one goes forward with the case. And  
19          I have no problem with telling the Sheriff's  
20          Department, instructing them to convey that message  
21          to the Sheriff's Department in Leflore County, that  
22          there is a subpoena there and they need to pick him  
23          up.

24          BY MR. BILLY GILMORE: Can I have about 5  
25          minutes--

26          BY THE COURT: --Now I don't know whether I have  
27          got any authority to order the Sheriff's Department  
28          of Leflore County to get him here, you understand?  
29          There is not an attachment.

1 BY MR. BILLY GILMORE: Well, as I say, it's so  
2 far -- I know you can direct this Sheriff to go get  
3 him, but that will take too long. Could we have  
4 about five minutes then to regroup?

5 BY THE COURT: Okay.

6 (FOLLOWING A BRIEF RECESS, TRIAL RECONVENED IN  
7 OPEN COURT WITH THE DEFENDANT AND THE JURY BOTH  
8 PRESENT:)

9 BY THE COURT: Who do you have next?

10 BY MR. BILLY GILMORE: Call Connie Moore.

11 CONNIE MOORE,

12 a black female having been called as a witness by the  
13 Defendant, having first been duly sworn, testified as follows,  
14 to-wit:

15 BY THE COURT: Have a seat up there. State your  
16 name for the record.

17 BY THE WITNESS: Connie Moore.

18 BY MR. BILLY GILMORE: May I proceed, Your  
19 Honor?

20 DIRECT EXAMINATION BY MR. BILLY GILMORE:

21 Q. You are Connie Mae Moore?

22 A. Yes, sir.

23 Q. And where do you live, Ms. Moore?

24 A. At 320 Cage Street.

25 Q. And what town is that in?

26 A. Winona.

27 Q. If you would, speak a little louder and speak into  
28 that mike in front of you where everyone can hear you all the  
29 way down. Okay, now you live in Winona?

- 1 A. Yes, sir.
- 2 Q. And are you employed?
- 3 A. U. S. Corrulite.
- 4 Q. Okay, where is that?
- 5 A. In Winona.
- 6 Q. How long have you been employed there?
- 7 A. April. I started in April.
- 8 Q. Since April of this year?
- 9 A. Yes, sir.
- 10 Q. Okay. Do you know Curtis Flowers?
- 11 A. Yes, sir.
- 12 Q. How long have you known Curtis Flowers?
- 13 A. Three years. We have been dating.
- 14 Q. Three years?
- 15 A. Yes, sir.
- 16 Q. All right. Now you say three years. Have you known
- 17 him personally three years?
- 18 A. Well, we have been dating three years.
- 19 Q. All right, when you are saying you are dating, do
- 20 y'all live together?
- 21 A. Yes, sir.
- 22 Q. And have you known him more than three years?
- 23 A. No, sir.
- 24 Q. But y'all have lived together about how long?
- 25 A. Three years.
- 26 Q. And where did you live on July 16th, 1996?
- 27 A. 702 B McNutt Drive in Winona.
- 28 Q. Winona?
- 29 A. Yes, sir.

1 Q. Who all lived in that apartment or that house?

2 A. Marcus Moore, Lemarcus Moore, Brittany Moore, and  
3 Merissa Moore.

4 Q. You have four children?

5 A. Yes, sir.

6 Q. Okay. Now on July 16th, 1996, who all lived in that  
7 house?

8 A. Oh, it was Lemarcus, Brittany, me and Curtis.

9 Q. Okay. Now you have one child named Marcus and one  
10 named Lemarcus?

11 A. Lemarcus, yes, sir.

12 Q. Okay, which one is older?

13 A. Marcus.

14 Q. Now Marcus was not living in the house there on July  
15 16th?

16 A. No, sir.

17 Q. Okay, where was he living at that time?

18 A. With his father.

19 Q. Up until what time did he live with you?

20 A. January the 15th of '96.

21 Q. Okay. How do you know that date?

22 A. They was out of school because it was Dr. Martin  
23 Luther King; they had that day off.

24 Q. Okay, so that's the day he went to live with his  
25 father?

26 A. With his father, yes, sir.

27 Q. Okay. Now do you buy clothes and shoes for your  
28 children?

29 A. Yes, sir.

1 Q. More specifically, do you buy clothes and shoes for  
2 Marcus?

3 A. Yes, sir.

4 Q. Okay. Now have you ever bought a pair of Fila tennis  
5 shoes for your son Marcus?

6 A. Yes, sir.

7 Q. And when did you buy a pair of Fila tennis shoes for  
8 your son Marcus?

9 A. It was like--let me see. It was in November of '95.

10 Q. Okay. And where did you buy those shoes?

11 A. The Shoe Department in Greenwood.

12 Q. Okay, and when did you deliver those shoes to your  
13 son?

14 A. When I got back to the house, he was at the  
15 basketball court, but when we got home.

16 Q. Okay, so he was living with you there then?

17 A. Yes, sir.

18 Q. Do you know what size shoes you bought for your son?

19 A. A ten and a half.

20 Q. And those were a Fila brand?

21 A. Yes, sir.

22 Q. Okay. Now when he went to live with his father on  
23 January 15th of 1996, tell the Court whether or not he carried  
24 those shoes with him?

25 A. Yes, sir. I think so. He had packed all his clothes  
26 when I got there.

27 Q. Did you see those shoes in your house any time after  
28 July 15th of '96?

29 A. No, sir.

1 Q. Do you know what size shoe your son wears now?

2 A. 11.

3 Q. Now Ms. Moore.

4 A. Sir.

5 Q. Did the police come to your house on or about July  
6 16th, 1996?

7 A. Yes, sir.

8 Q. And were they asking or inquiring about any  
9 particular thing?

10 A. No, sir.

11 Q. Okay, did they come back at a later time and inquire  
12 about any specific thing?

13 A. Well, they wanted to, you know, search the house.

14 Q. Did they say what they were looking for?

15 A. No, sir.

16 Q. Did they remove any shoes from the house?

17 A. No, sir, nothing but a shoe box.

18 Q. A shoe box?

19 A. A shoe box.

20 BY MR. BILLY GILMORE: May I approach the  
21 witness, Your Honor?

22 BY THE COURT: Yes.

23 BY MR. BILLY GILMORE:

24 Q. Ms. Moore, I hand you what has been marked as State's  
25 Exhibit 88 A. If you would, look at that, please?

26 A. (Witness complies.)

27 Q. Can you identify that?

28 A. Yes, sir.

29 Q. What is that?



- 1 A. A shoe box.
- 2 Q. All right. And describe what kind of shoe box it is?
- 3 A. A Grant Hill.
- 4 Q. Beg your pardon?
- 5 A. A Grant Hill.
- 6 Q. Grant Hill. Does it also say "Fila" on it?
- 7 A. Yes, sir.
- 8 Q. Is that the same brand of shoe, Grant Hill Fila?
- 9 A. Yes, sir.
- 10 Q. Have you seen that box before?
- 11 A. Yes, sir.
- 12 Q. Where did you first see that box?
- 13 A. Say what, sir?
- 14 Q. When did you-- where was the first time did you see
- 15 that box? Where and when?
- 16 A. When I got -- talking about when I got them from the
- 17 store?
- 18 Q. All right, so you bought those, and that was the box
- 19 those shoes are in you have described to the Court?
- 20 A. Let's see.
- 21 Q. All right--
- 22 A. --I don't know if they were blue.
- 23 Q. Now after you gave the shoes to Marcus and he moved
- 24 to live with his father, did you keep the box?
- 25 A. Yes, sir.
- 26 Q. Why did you keep the box?
- 27 A. I had some Christmas bows. I put Christmas bows. I
- 28 always keep my shoe boxes.
- 29 Q. Okay, just a typical lady, use it for storage?

- 1           A.    Yes, sir.
- 2           Q.    You kept what in it?
- 3           A.    Bows, Christmas bows.
- 4           Q.    Do you remember who came back to your house and asked
- 5   you about the box?
- 6           A.    No.  No, sir.
- 7           Q.    Was it one of the police officers or investigators?
- 8           A.    Yes, sir, one of them.
- 9           Q.    Okay, did they come and ask you about the box, or did
- 10   they come search your house for the box?
- 11          A.    Searched my house.  Then they asked me to clean it
- 12   out, and I gave it to them.
- 13          Q.    And so you emptied the box out?
- 14          A.    Yes, sir.
- 15          Q.    And when they searched your house, did you tell them
- 16   it was okay to search your house?
- 17          A.    I, I think so.
- 18          Q.    You gave them permission to search?
- 19          A.    Yes, sir.
- 20          Q.    And so they asked you to clean the box out?
- 21          A.    Yes, sir.
- 22          Q.    And you had it full of bow ribbons?
- 23          A.    Yes, sir.
- 24          Q.    And they carried it with them?
- 25          A.    Yes, sir.
- 26          Q.    And is this the first time you have seen the box
- 27   since then?
- 28          A.    Yes, sir.
- 29          Q.    Now at the time of July 16th, 1996, where were you

1 employed?

2 A. Nowhere.

3 Q. July 16, 1996, where were you employed?

4 A. Nowhere.

5 Q. Nowhere? I'm sorry; I didn't hear you. Okay--

6 A. Well, at Richardson Brothers. We got laid off in  
7 October, so I was at Richardson Brothers. Excuse me.

8 Q. All right, so you worked from July 16th until  
9 October; then you were laid off? I believe--

10 A. --Until October. No, sir; I got laid off the 22nd.

11 Q. 22nd of?

12 A. July.

13 Q. July.

14 A. Yes, sir.

15 Q. All right, I believe that company went out of  
16 business?

17 A. Yes, sir.

18 Q. It was a factory of some sort?

19 A. Yes, sir.

20 Q. And it closed?

21 A. Yes, sir.

22 Q. Now how long did you live at the McNutt address  
23 before you moved?

24 A. I think about four, four or five years.

25 Q. No, I mean after, after. Did you move from-- was it  
26 702 A McNutt?

27 A. Yes, sir.

28 Q. When did you move from that address?

29 A. It was November or something. I can't remember the

1 date.

2 Q. November of '96?

3 A. Yes, sir.

4 Q. Where did you move to?

5 A. To Texas.

6 Q. Okay. Did Curtis move with you, or where was Curtis  
7 at that time?

8 A. In Texas.

9 Q. Was he already in Texas?

10 A. Yes, sir.

11 Q. Okay. Why did Curtis go to Texas, if you know?

12 A. Well, his sister had been calling wanting him to come  
13 out there since, you know, the plant was, they had got laid  
14 off.

15 BY MR. EVANS: Your Honor, I don't believe this  
16 witness can testify as to why someone else did  
17 something. That would be improper, something that  
18 she would not have personal knowledge of.

19 BY THE COURT: She only can testify to her own  
20 personal knowledge.

21 BY MR. BILLY GILMORE:

22 Q. Do you know if Curtis went to Texas to get a job?

23 A. Yes, sir.

24 Q. Did he get a job?

25 A. Yes, sir.

26 Q. All right, when did he leave to go to Texas?

27 A. October.

28 Q. October?

29 A. Yes, sir.

1 Q. Do you know about when in October?

2 A. No.

3 Q. Now this was some several months after the incident  
4 there at Tardy's Furniture?

5 A. Yes, sir.

6 Q. Now was he able to find employment around Winona?

7 BY MR. EVANS: I object. This is not proper for  
8 this witness. She is not the proper witness to  
9 testify what he was able to do.

10 BY THE COURT: Unless she knows of her own  
11 personal knowledge.

12 BY MR. BILLY GILMORE:

13 Q. Do you know if he was able to find employment around  
14 the Winona area?

15 A. No, sir.

16 Q. He was not able?

17 A. No.

18 BY MR. EVANS: Unless she can explain how she  
19 knows that, Your Honor, I would object.

20 BY THE COURT: All right, ask-- okay, the last  
21 question, the objection is sustained on.

22 BY MR. BILLY GILMORE:

23 Q. Did Curtis obtain a job in Texas?

24 A. Yes, sir.

25 Q. And did subsequently, did you go to Texas where he  
26 was?

27 A. Yes, sir.

28 Q. And I believe you said you went in November?

29 A. Yes, sir.

1 Q. Now when you got to Texas, was Curtis employed?

2 A. Yes, sir.

3 Q. And where was he employed?

4 A. At Kroger.

5 Q. Kroger?

6 A. Yes, sir.

7 Q. Is that a grocery store?

8 A. Yes, sir.

9 Q. Was he employed anywhere else?

10 A. No, sir.

11 Q. Okay. And what type work was he doing?

12 A. Stocker.

13 Q. Stocking the groceries?

14 A. Yes, sir.

15 Q. Did you get a job when you got there?

16 A. Yes, sir.

17 BY MR. EVANS: Your Honor, there is absolutely  
18 no relevance in what this Defendant did in Texas at  
19 some time a couple of months after the murders.  
20 Unless he can show some type of relevancy, this is  
21 just a waste of time.

22 BY MR. BILLY GILMORE: Your Honor, we can link  
23 it up.

24 BY THE COURT: All right. I will let you go a  
25 little further.

26 BY MR. BILLY GILMORE:

27 Q. All right. Did you obtain a job in Texas?

28 A. Yes, sir.

29 Q. Okay. Now did you establish a place to live there in

1 Texas?

2 A. Well, I was staying with his sister.

3 Q. Staying with Curtis' sister?

4 A. Yes, sir.

5 Q. Now did anything happen along about the first week of

6 January to cause you or Curtis to come back to Mississippi?

7 A. Yes, sir.

8 Q. What happened?

9 A. They come picked him up.

10 Q. They come and picked him up?

11 A. Arrest him, yes, sir.

12 Q. This was about the first week in January of '97?

13 A. Yes, sir.

14 Q. Let me ask you this. From the time that you and

15 Curtis went to Texas, did y'all come back to Winona and visit?

16 A. Yes, sir.

17 Q. How many times?

18 A. Occasionally. I can't remember exactly how many

19 times, but we come back.

20 Q. Was it more than one time?

21 A. Yes, sir.

22 Q. Had you been to Winona the week before he was picked

23 up in Texas?

24 A. Yes, sir.

25 Q. Did your family members and Curtis' family members

26 know where you were in Texas?

27 A. Yes, sir.

28 Q. Throughout this entire investigation, did you fully

29 cooperate with the law officers, police officers and

1 investigators?

2 A. Yes, sir.

3 Q. Okay. Now getting back to the morning of July 16th,  
4 1996, I believe you said you were employed at Richardsons?

5 A. Yes, sir.

6 Q. Is that a furniture company?

7 A. Yes, sir.

8 Q. Did you go to work that day?

9 A. Yes, sir.

10 Q. All right, do you remember what time you left for  
11 work that morning?

12 A. About 10 minutes until 7:00 because we have to be at  
13 work at 7 o'clock.

14 Q. How far is Richardson's Furniture factory from where  
15 you were living?

16 A. Um, I have no idea. Not far.

17 Q. Not far. Did you have arrangements to ride to work  
18 with someone?

19 A. No. Mostly I walk.

20 Q. Mostly walk?

21 A. Yes, sir.

22 Q. But you did work that day?

23 A. Yes, sir.

24 Q. Where were you when you got word of the incident at  
25 Tardy's Furniture?

26 A. At work.

27 Q. Do you remember about what time it was?

28 A. No, sir.

29 Q. Now Ms. Moore, there has been some testimony about



1 some money observed in the headboard of your bed?

2 A. Yes, sir.

3 Q. Describe this bed, the headboard especially, to the  
4 Court.

5 A. Well, it had drawers.

6 Q. If you will speak louder, please. I am having  
7 trouble hearing you.

8 A. Well, it had drop doors to it, and I keep my money  
9 and stuff, bills in it, the week that I have to pay my bills; I  
10 put them in that.

11 Q. Do you use that like it's a business desk?

12 A. Yes, sir, to store it up in there whenever I get a  
13 bill.

14 Q. So when you get bills, that's where you put them?

15 A. Yes, sir.

16 Q. And I believe you say you kept some money there?

17 A. Yes, sir.

18 Q. Now on that, do you remember an officer making some  
19 comment about the money being there?

20 A. Yes, sir.

21 Q. Now do you remember what day that was?

22 A. No.

23 Q. But it was after the police officers came there to  
24 talk to you and Curtis?

25 A. Yes, sir.

26 Q. Now what was that money for?

27 A. My rent.

28 Q. Okay, and when was it due?

29 A. Well, I pay it, you know, it due the 6th. But they

1 give you until the 15th, and then after the 15th, you go  
2 through court with it.

3 Q. Okay, so was this after the 15th?

4 A. Yes, sir.

5 Q. And did, in fact, did you take the money and pay the  
6 rent?

7 A. Yes, sir.

8 Q. When did you pay it?

9 A. That Monday, the following Monday.

10 Q. The following Monday?

11 A. Yes, sir.

12 Q. This was following-- you are talking about the 16th  
13 or whenever they talked to you?

14 A. Yes, sir.

15 Q. And who did you pay it to?

16 A. Winona Housing Authority.

17 Q. Beg your pardon?

18 A. Winona Housing Authority.

19 Q. And do you remember about how much it was, your rent  
20 was?

21 A. It was two, it was two something. I don't know.

22 Q. A little over 200?

23 A. Yes, sir, because it had went through, you know,  
24 court and it was 177 and they charge you a dollar for every day  
25 late. And they charge a dollar and then they charge the court  
26 costs, and it was \$40.00.

27 Q. So do you remember how much you paid at that  
28 particular time?

29 A. It was two something.

1 Q. A little over 200?

2 A. Yes, sir.

3 Q. All right, the money that was in the headboard, you  
4 said you were saving that to pay your rent?

5 A. Yes, sir.

6 Q. And you did pay the rent?

7 A. Yes, sir.

8 Q. Where did that money come from?

9 A. From my pay check.

10 Q. Did that come out of one pay check or more than one  
11 pay check?

12 A. One. My sister had gave me \$50.00 because I had  
13 loaned her some money.

14 Q. How often did you get paid at Richardson's Furniture?

15 A. Every week.

16 Q. Every week?

17 A. Yes, sir.

18 Q. Do you remember how much your pay check was that  
19 prior week?

20 A. No, I can't. No, sir.

21 Q. And your sister had given you some money to help on  
22 the rent?

23 A. Yes, sir-- well, she had owed me, and she gave me  
24 \$50.00. She was giving me like \$50.00.

25 Q. But you did have enough to pay your rent?

26 A. Yes, sir.

27 Q. So the money there was some that you got out of your  
28 pay check and some that your sister had let you have?

29 A. Yes, sir.

1 Q. How long had that money been there?

2 A. Friday, since Friday.

3 Q. Beg your pardon?

4 A. Every since Friday when I got my check.

5 Q. The prior Friday?

6 A. And I cashed it, and I just put it up in there.

7 Q. All right, so when you are saying the prior Friday,  
8 you are talking about the Friday before the 16th then? So you  
9 had had the money in the headboard some four or five days?

10 A. Yes, sir.

11 Q. Before the officer commented about it?

12 A. Yes, sir.

13 Q. Okay. Now Ms. Moore, what type shoes does Curtis  
14 Flowers wear?

15 A. Nikes.

16 Q. Is that a tennis shoe or dress shoes?

17 A. Tennis shoes.

18 Q. And how long has he been wearing Nike shoes?

19 A. Every since I have known him.

20 Q. And y'all have been living together, I believe you  
21 said about three years?

22 A. Yes, sir.

23 Q. During this three year period of time, have you ever  
24 known him to wear a Grant Hill or Fila shoe?

25 A. No, sir.

26 Q. Have you ever seen him wearing a Fila shoe during  
27 this three year period?

28 A. No, sir.

29 Q. The morning that you went to work, Ms. Moore, who was

1 left at your house?

2 A. My two kids, Lemarcus and Brittany.

3 Q. Was Curtis there--

4 A. --and Curtis. Yes, sir.

5 Q. So who was baby sitting the children?

6 A. Curtis.

7 Q. Curtis?

8 A. Yes, sir.

9 Q. Do you know whether or not he got up before you left  
10 or, that morning?

11 A. No. I don't, I don't remember.

12 Q. You don't remember?

13 A. No, sir.

14 Q. Do you know whether he was awake or asleep when you  
15 left?

16 A. I think he was; I don't know. I can't remember  
17 because sometimes he leave-- when I leave, he be asleep, and  
18 sometimes he don't.

19 Q. But you don't remember that morning?

20 A. I can't remember that particular.

21 Q. That has been a long time ago?

22 BY MR. BILLY GILMORE: Court indulge me a  
23 moment.

24 (Defense Counsel confer.)

25 BY MR. BILLY GILMORE: Tender the witness, Your  
26 Honor.

27 CROSS-EXAMINATION BY MR. EVANS:

28 Q. Good morning, Ms. Moore.

29 A. Good morning.

1 Q. Well, it wasn't a Monday that they came out there and  
2 searched, was it?

3 A. They came and searched my house that what, Saturday  
4 or Sunday before; they found that money. It wasn't through the  
5 week.

6 Q. Well, let's make sure we have got it straight. The  
7 murders were on the 16th; right?

8 A. Yes, sir.

9 Q. That is a Tuesday?

10 A. Yes, sir.

11 Q. Did they search that day?

12 A. Yes, sir -- well, no, sir. I don't remember.

13 BY THE COURT: You are going to have to speak  
14 up, ma'am. I am sure the jury can't hear you.

15 BY THE WITNESS:

16 A. I don't remember.

17 Q. You don't remember?

18 A. No.

19 Q. Well, they didn't search the day before the murders,  
20 did they?

21 A. No, sir.

22 Q. At least the day of the murder or after the murders;  
23 is that right?

24 A. Yes, sir.

25 Q. And if they searched the 19th, that would be on a  
26 Friday, wouldn't it?

27 A. Yes, sir.

28 Q. So according to that, you had had the money in the  
29 headboard for a solid week while all this late charges was

1 running up on your rent; is that right?

2 A. On a Friday when I got paid. Like I said, they  
3 checked that Sunday or that Saturday one.

4 Q. Well, I thought you said you didn't know when they  
5 checked?

6 A. I said, I stated--

7 Q. What Sunday did they check it?

8 A. I don't remember the day.

9 Q. Do you remember the date these murders happened?

10 A. Yes, sir.

11 Q. How many days after the murders happened did they  
12 check your house?

13 A. They checked it a couple of times, but I don't, I  
14 can't recall.

15 Q. When they found the \$235.00 hid in the bed, when did  
16 they find it?

17 A. I don't know.

18 Q. But you just got through telling this jury a few  
19 minutes ago that you had been holding this money four or five  
20 days; is that right?

21 A. I think it was after the sixteenth-- wait a minute.  
22 I done forgot what day they checked it.

23 Q. Is your answer yes or no?

24 A. Say what?

25 Q. Is your answer yes or no?

26 A. Ask me the question back over.

27 Q. Had you been holding that money four or five days hid  
28 in the bed there?

29 A. (Extremely softly) No, sir.

1 Q. I can't hear you.

2 A. That happened Tuesday. There was, what, 19th, that  
3 Friday was the 19th. Whenever that Friday was, that's when I  
4 paid--that Monday.

5 Q. Would you answer my question. Had you been holding  
6 that money in the bed four or five days like you told the jury  
7 while ago?

8 A. Yes, sir.

9 Q. Then I will get back to my other question. If this  
10 late charge was running up on that money every day and you  
11 already had it, why didn't you go ahead and pay it?

12 A. I thought, you know, I pay it when I got ready.

13 Q. You pay it when?

14 A. Whenever I get ready.

15 A. Whenever you get ready?

16 A. I always do. Uh-huh.

17 Q. So your late charges don't bother you?

18 A. No. I always pay it like that.

19 Q. All right. Let's get off of that and get on to  
20 something else. You are the Defendant's girlfriend; is that  
21 right?

22 A. True.

23 Q. Y'all were living together?

24 A. Yes, sir.

25 Q. How long had y'all been living together?

26 A. Three years.

27 Q. How long?

28 A. Three, three years.

29 Q. Three years?



1 A. Yes, sir.

2 Q. When he moved to Texas, you followed him out there?

3 A. Yes, sir. Well, he left in October, and I went in  
4 November.

5 Q. When he got arrested and brought back to Mississippi,  
6 you followed him back here?

7 A. Yes, sir.

8 Q. Wherever he goes, you go?

9 A. Yes, sir.

10 Q. You are living with his folks now, aren't you?

11 A. Yes, sir.

12 Q. Ms. Moore.

13 A. Sir.

14 Q. Do you care for your son Lemarcus?

15 A. Yes, sir.

16 Q. Do you try to raise him right?

17 A. Yes, sir.

18 Q. Do you think it's right to try to get your son to lie  
19 for people?

20 A. No, sir--

21 BY MR. BILLY GILMORE: --I object, Your Honor.

22 BY THE COURT: Sustained.

23 BY MR. EVANS: Your Honor, I'm leading up to  
24 it. The next question will cover it.

25 BY THE COURT: Okay. Well, ask the next  
26 question. I will reserve my ruling.

27 BY MR. EVANS:

28 Q. Ms. Moore.

29 A. Sir.

1           Q.    Did you tell your son Lemarcus Moore that you wanted  
2 him to go to Curtis' lawyer, Mr. Gilmore, and lie for Curtis,  
3 tell him that Curtis was at home all morning that day? Did you  
4 also tell him that Curtis was already in enough trouble; he was  
5 going to have to lie for him, and did you further tell your own  
6 son that you wanted him to lie and say that Curtis didn't have  
7 any Fila shoes, that the only one in the household that owned  
8 Fila shoes was his brother Marcus?

9           A.    No, sir.

10          Q.    Do you deny telling your son those things?

11          A.    I didn't.

12          Q.    Do you know of any reason that your son would have to  
13 say that you asked him to lie if you didn't?

14          A.    No, sir.

15          Q.    Do you remember buying these shoes?

16          A.    Yes, sir.

17          Q.    You bought them in Greenwood, didn't you?

18          A.    Yes, sir.

19          Q.    Patricia Hollman was with you when you bought them,  
20 wasn't she?

21          A.    No, sir.

22          Q.    You don't remember that?

23          A.    No, sir. She wasn't.

24          Q.    Let me ask you this. Do you remember the day you  
25 bought those shoes telling Patricia Hollman that you were  
26 buying those for Curtis' birthday present?

27          A.    No, sir.

28          Q.    Do you deny that?

29          A.    Yes, sir.

- 1 Q. And if she said that, that wouldn't be true?
- 2 A. It wouldn't.
- 3 Q. So you deny that she was with you when you bought the
- 4 shoes, and you further deny that you told her you were buying
- 5 them for Curtis?
- 6 A. Yes, sir.
- 7 Q. How long before the murders did you know that Curtis
- 8 had been fired from down there at Tardy's?
- 9 A. He wasn't fired.
- 10 Q. Well, what happened? If he wasn't fired, he didn't
- 11 have a job, did he?
- 12 A. No.
- 13 Q. I can't hear you.
- 14 A. He wasn't fired.
- 15 Q. Well, what do you call it when you are told not to
- 16 come back to work?
- 17 A. He wasn't told that because if he was, she wouldn't
- 18 have been calling, whoever called.
- 19 Q. She didn't tell him what?
- 20 A. I said he wasn't fired.
- 21 Q. You are saying that she didn't tell him that he
- 22 wasn't needed back at work again?
- 23 A. No, sir. No.
- 24 Q. I don't understand what you are saying. Are you
- 25 saying that that was not said or that's not what you are
- 26 saying?
- 27 A. No, sir.
- 28 Q. No to which part?
- 29 A. That wasn't said.

- 1 Q. That wasn't said?
- 2 A. No, sir, as far as I know.
- 3 Q. I guess Curtis was still going down there working
- 4 every day?
- 5 A. No, sir. He wasn't.
- 6 Q. Well, did he just decide on his own he didn't want to
- 7 work down there any more?
- 8 A. Yes, sir.
- 9 Q. So if he told the officers that she told him that he
- 10 didn't have a job any more, he would have been lying?
- 11 A. I guess so.
- 12 Q. Curtis was wearing a size ten and a half shoe at the
- 13 time of these murders, wasn't he?
- 14 A. No, sir.
- 15 Q. He wasn't?
- 16 A. No, sir.
- 17 Q. Well, what size shoe was he wearing?
- 18 A. 11.
- 19 Q. Well, how can you explain the Nike shoes that were
- 20 taken off of his feet and taken to the Crime Lab as being ten
- 21 and a half?
- 22 A. Well, I don't know about that.
- 23 Q. I want you to explain it.
- 24 A. That is not left up to me to explain.
- 25 Q. It is if I'm asking you the question.
- 26 A. I don't think so.
- 27 Q. I would like for you to explain how you say he didn't
- 28 wear a ten and a half when that is the size shoe he had on his
- 29 foot?

1           A.   (Extremely softly) Well, it's not left up for me to  
2 explain.

3           Q.   I can't hear you.

4                   BY THE COURT: Speak up.

5           A.   I don't know.

6           Q.   You don't know? What it amounts to you don't want to  
7 know, do you?

8           A.   (Extremely softly) Uh-uh.

9           Q.   All you are interested in is trying to cover up for  
10 Curtis and get him out of these murders--

11          A.   --I'm not trying to cover up for nothing--

12                   BY MR. BILLY GILMORE: --object, Your Honor.

13                   BY THE COURT: Sustained.

14 BY MR. EVANS:

15          Q.   You knew about the problem that Curtis had with the  
16 batteries that fell off the truck too, didn't you?

17          A.   Yes, sir.

18          Q.   You knew that he had caused damage to some batteries  
19 that had fell off the truck?

20          A.   Yes, sir. He mentioned that.

21          Q.   You also knew that they were withholding his check  
22 because of that?

23          A.   Yes, sir. He mentioned that.

24          Q.   And you didn't have your rent money until he brought  
25 it in on the 16th, did you?

26          A.   He didn't bring it in--

27                   BY MR. BILLY GILMORE: --I object, Your Honor.

28                   BY MR. EVANS: On what grounds?

29                   BY MR. BILLY GILMORE: She has already testified

1 when she got the rent.

2 BY THE COURT: Yeah, we have been through the  
3 rent. Let's move on.

4 BY MR. EVANS: Your Honor, I don't believe I  
5 have any further questions of this witness.

6 BY THE COURT: Redirect?

7 BY MR. BILLY GILMORE: Yes, Your Honor.

8 REDIRECT EXAMINATION BY MR. BILLY GILMORE:

9 Q. Ms. Moore.

10 A. Sir.

11 Q. What time did you normally get off work in the  
12 afternoon?

13 A. 3:00. But that particular day I got off at 5:00,  
14 5:30. I think it was 5:00.

15 Q. What was the normal time you got off?

16 A. 3:00.

17 Q. 3:00?

18 A. Yes, sir.

19 Q. Now what time did the Housing Project office normally  
20 close where you pay the rent?

21 A. 5:00.

22 Q. 5:00?

23 A. Yes, sir.

24 Q. Okay, did you have transportation?

25 A. No, sir.

26 Q. Where is--

27 BY MR. EVANS: I think this is improper  
28 redirect. She has already said the reason she didn't  
29 pay it was because she didn't pay it because she

1           didn't want to pay it.

2           BY MR. BILLY GILMORE: Well, Your Honor, he went  
3           into it thoroughly--

4           BY MR. EVANS: --Now he is attempting to try to  
5           cover to give her some excuse for why she didn't pay  
6           it. It is improper and it is leading.

7           BY MR. BILLY GILMORE: She has got a right to  
8           explain her answer, Your Honor.

9           BY THE COURT: Well, don't lead her. Ask it  
10          again.

11 BY MR. BILLY GILMORE:

12          Q. Where is the Housing Project office located?

13          A. It's in Winona.

14          Q. Is it close to where you live?

15          A. No. It's not walking distance.

16          Q. So during this time you were working until 5 o'clock?

17          A. Yes, sir.

18          Q. And what time did the project office close?

19          A. 5:00.

20          Q. You said you did not have any transportation to go--

21          A. --no, sir.

22          Q. --to pay the rent? All right. Now Mr. Evans has  
23          made some comment about you buying shoes for Curtis' birthday.  
24          When did you say you bought these shoes?

25          A. In November.

26          Q. And when is Curtis' birthday?

27          A. May.

28          Q. Now you told Mr. Evans that Curtis was not fired?

29          A. Yes, sir.

1 Q. And I believe you said that Ms. Tardy called the  
2 house about him coming to work?

3 A. Yes, sir.

4 Q. Was this after the 4th of July?

5 A. Yes, sir. I think so.

6 Q. Do you know how many occasions Ms. Tardy called after  
7 the 4th of July for him to come to work?

8 A. No.

9 Q. Was it more than one time?

10 A. (Extremely softly) I think so. I don't remember.

11 Q. Beg your pardon?

12 A. I don't remember.

13 Q. But she did call and ask him to come back to work?

14 A. Yes, sir.

15 Q. After the 4th of July?

16 A. (No audible response).

17 Q. Now the shoes that they took off of Curtis feet, do  
18 you know if they were his or his father's?

19 A. I think his father's.

20 BY MR. EVANS: Your Honor, this is improper  
21 rebuttal.

22 BY MR. BILLY GILMORE: Your Honor, he went into  
23 the size of the shoes. That's what I'm leading up  
24 to.

25 BY THE COURT: What was your question?

26 BY MR. BILLY GILMORE: I believe I asked him  
27 whose shoes it was. I'm not sure-- if she knows.

28 BY THE COURT: I will allow it.

29 BY MR. BILLY GILMORE:



1 Q. Let me rephrase my question. Do you know if a pair  
2 of Curtis' father's shoes are there at your house?

3 A. Yes, sir.

4 Q. Do you know if Curtis wore those sometimes?

5 A. Yes, sir.

6 Q. Do you know what size they were?

7 A. No, sir.

8 Q. Now Mr. Evans asked you about the battery incident  
9 down when Curtis was working. You were aware of that?

10 A. Yes, sir.

11 Q. Did you ever hear Curtis make any threats toward  
12 anybody down at the Tardy's?

13 A. No, sir.

14 Q. Especially Bertha Tardy?

15 A. No, sir.

16 BY MR. BILLY GILMORE: No further questions.

17 BY THE COURT: Is she finally excused?

18 BY MR. EVANS: Your Honor, since opposing  
19 Counsel brought up something on redirect about the  
20 fights that we couldn't go into, I would ask to be  
21 allowed to ask a couple of questions--

22 BY THE COURT: --About the what?

23 BY MR. EVANS: About threats and fights,  
24 arguments. I would like to be able to go back into  
25 something we could not earlier cover.

26 BY THE COURT: No, sir. Is she finally  
27 excused?

28 BY MR. BILLY GILMORE: Yes, Your Honor.

29 BY THE COURT: You are free to leave.

1 WITNESS EXCUSED.

2 BY THE COURT: Who do you have next?

3 BY MR. BILLY GILMORE: Call James Glover.

4 BILLY JAMES GLOVER,

5 a black male having been called to testify as a witness by the  
6 Defendant, having first been duly sworn by the Clerk, testified  
7 as follows, to-wit:

8 BY THE COURT: Have a seat up here.

9 BY MR. BILLY GILMORE: Your Honor, may I move  
10 that exhibit out of the way?

11 BY THE COURT: Yes, sir.

12 BY MR. BILLY GILMORE: May I proceed, Your  
13 Honor?

14 DIRECT EXAMINATION BY MR. BILLY GILMORE:

15 Q. State your name, please.

16 A. Billy James Glover.

17 Q. And where do you live, Mr. Glover?

18 A. North Carrollton, Mississippi.

19 Q. And how long have you lived there?

20 A. All my life.

21 Q. Where are you employed?

22 A. J. J. Ferguson.

23 Q. Now Mr. Glover, I'm going to call your attention--  
24 well, let me ask you this. Do you know a James Ward?

25 A. Yes, sir.

26 Q. How do you know James Ward?

27 A. Over the years, you know, family; he and my family  
28 are real close and we kind of grew up together.

29 Q. Okay. Y'all ever work together?

- 1           A.    Yes, sir.
- 2           Q.    And when was this?
- 3           A.    We work together now.
- 4           Q.    Y'all still work together?
- 5           A.    (Witness nods his head.)
- 6           Q.    All right.  Do you know if James Ward is related to
- 7   Curtis Flowers?
- 8           A.    Yeah.
- 9           Q.    Do you know what kin?
- 10          A.    Brother-in-law.
- 11          Q.    Does that mean that he is married to Curtis' sister?
- 12          A.    Yeah.
- 13          Q.    And what is her name?
- 14          A.    Priscilla.  Priscilla Ward.
- 15          Q.    Do you know Priscilla Ward?
- 16          A.    Yeah.
- 17          Q.    Now Mr. Glover, I want to call your attention to July
- 18   16th, 1996.  Do you remember where you were that particular
- 19   day, more specifically in the morning hours?
- 20          A.    Well, in the morning I was up at James Ward's house.
- 21          Q.    All right.  Now James Ward and-- does Priscilla Ward
- 22   also live there?
- 23          A.    Yeah.
- 24          Q.    Okay, do you know about what time you got to James
- 25   Ward's house?
- 26          A.    About 15 minutes to 9:00.
- 27          Q.    Okay, who was there when you got there?
- 28          A.    Priscilla and Toya.
- 29          Q.    Who is Latoya?

- 1           A.    That is Priscilla's first cousin from Louisiana.
- 2           Q.    Okay. Do you know her last name?
- 3           A.    No. I don't know that.
- 4           Q.    But she is Priscilla Ward's cousin that lives in
- 5   Louisiana?
- 6           A.    Cousin. Yeah.
- 7           Q.    And was she already there when you got there?
- 8           A.    Both of them, they was there.
- 9           Q.    Was anybody else there?
- 10          A.    That was it.
- 11          Q.    Do you know where James Ward was?
- 12          A.    James had went to work.
- 13          Q.    Okay, you didn't go to work that day?
- 14          A.    No, I didn't go that day.
- 15          Q.    Now how do you know, Mr. Glover, that it was about 15
- 16   until 9:00 when you got there?
- 17          A.    Well, it take about 15 minutes to drive from
- 18   Carrollton over there. I left the store about 8:30 from
- 19   Carrollton.
- 20          Q.    All right, is there any other way that you know about
- 21   what time of day it was after you got to the Ward residence?
- 22          A.    Yeah, James' wife said she had to be at court at 9
- 23   o'clock. And because after I got there and sat down about a
- 24   minute or two, and then she got up and left and went to the
- 25   court because she had to be at court at 9:00.
- 26          Q.    All right. So how do you know what time it was then?
- 27          A.    Well, they had a clock on the wall, a big old clock.
- 28          Q.    Did you look at it?
- 29          A.    Well, yeah, I looked at it.

1 Q. All right, do you know about what time it was when  
2 you looked at it?

3 A. It was about 5 minutes to 9:00 because she was  
4 getting ready to leave then.

5 Q. All right, so she was having to go uptown for  
6 something at 9 o'clock?

7 BY MR. HORAN: Your Honor, he has been leading  
8 this witness all over the place, and I would object  
9 to any further leading.

10 BY THE COURT: Don't lead the witness.

11 BY MR. BILLY GILMORE:

12 Q. What time did Priscilla Ward leave that morning?

13 A. About maybe 5 minutes to 9:00, 10 minutes to 9:00,  
14 something like that.

15 Q. Now who else was there when she left?

16 A. Latoya.

17 Q. And yourself?

18 A. That's all.

19 Q. All right. Did you see Curtis Flowers any time that  
20 morning?

21 A. I seen him that morning.

22 Q. And what time did you see him?

23 A. Uh, 5 or 10 minutes after 9:00.

24 Q. All right. Was this before or after Priscilla left  
25 the house?

26 A. It was after she had left.

27 Q. And how long had she been gone before you saw Curtis?

28 A. She had been gone about 10 or 15 minutes roughly.

29 Q. And where did you see Curtis Flowers that day?

1 A. He came to his sister's house.

2 Q. And that is Priscilla you are talking about?

3 A. Priscilla, yeah.

4 Q. And this was a little after 9:00?

5 A. It was after 9:00, about.

6 Q. Okay, and was Latoya there then?

7 A. Yeah, she was there.

8 Q. Do you know why Curtis came over there that morning?

9 BY MR. HORAN: Objection, Your Honor. Unless he  
10 has some personal knowledge--

11 BY MR. BILLY GILMORE: --well, if he knows, Your  
12 Honor.

13 BY MR. HORAN: He has to lay the predicate.

14 BY THE COURT: He can answer it if he has  
15 personal knowledge.

16 BY MR. BILLY GILMORE:

17 Q. Do you know why Curtis Flowers came over there that  
18 morning?

19 A. Well, he come over there every, you know, every  
20 morning since he wasn't working, you know.

21 Q. But that particular morning, do you know why he came  
22 over there?

23 A. He came, he asked her for a band-aid, you know.

24 BY THE COURT REPORTER: I didn't understand.

25 A. He asked Latoya for a band-aid.

26 Q. And do you know whether or not he got a band-aid?

27 A. I don't really know.

28 Q. Did he go anywhere in the house while he was there?

29 A. They walked in the bathroom.

1 Q. About how long did he stay over there?

2 A. Maybe 10 or 15 minutes at the most.

3 Q. So he got there you think around--

4 BY MR. HORAN: --Objection, Your Honor. He is  
5 going to have to testify instead of Mr. Gilmore  
6 couching his testimony in his terms.

7 BY MR. BILLY GILMORE:

8 Q. All right, Mr. Glover--

9 BY MR. HORAN: If he doesn't like the answer,  
10 that is his problem.

11 BY MR. BILLY GILMORE:

12 Q. What time do you think Mr. Flowers got there?

13 A. (No response).

14 Q. Approximately?

15 A. Well, I can't really-- it was, the only thing I know  
16 it was after 9:00, you know. Between 9:00 and 9:30, something  
17 like.

18 Q. Was it between 9:00 and 9:30?

19 A. I think it about 15 after 9:00, 10 after 9:00, 10 or  
20 15 after 9:00.

21 Q. 10 or 15 after 9:00?

22 A. Yeah.

23 Q. And he stayed there how long after he got there?

24 A. He stayed there about 10 or 15 minutes, you know,  
25 just talking a little bit.

26 Q. All right. Now this was on July 16th, 1996, you are  
27 talking about?

28 A. I guess that was the date. You know, I didn't really  
29 keep up with that.

1 Q. Was this the date of the incident down at Tardy's  
2 Furniture?

3 BY MR. HORAN: Objection, Your Honor. He has  
4 led this witness. He is stretching his testimony and  
5 leading him all over the place. I hate to keep  
6 standing up here and objecting, but that's what he is  
7 doing.

8 BY THE COURT: Well, I don't think that question  
9 is leading. Overruled.

10 BY MR. BILLY GILMORE:

11 Q. Was this the same day of the incident at Tardy's  
12 Furniture?

13 A. Same day I seen Curtis?

14 Q. Yes.

15 A. Yeah.

16 Q. Now do you know how he was dressed that day when he  
17 came over to his sister's house?

18 A. Yeah, he had on some, it was some short pants and a  
19 body shirt, like tank top, you know, like a muscle shirt.

20 Q. A little narrow strap over the shoulders?

21 A. Yeah.

22 Q. Do you remember what color the short pants were?

23 A. Not really. Either, I thought, once I thought about  
24 it again, either black or blue, one of them.

25 Q. Black or blue?

26 A. Yeah.

27 Q. Do you know what type material they were?

28 A. I think they was sweat pants that had been cut off.  
29 I think that's what they was.



1 Q. All right, and what about the shirt? What color was  
2 it?

3 A. I think red and white.

4 Q. Red and white?

5 A. Red and white.

6 Q. Have any kind of designs on it or letters or writing?

7 A. It might have had, it might have had a number on it,  
8 you know. I don't.

9 Q. You don't remember?

10 A. I don't really recall.

11 Q. Do you know what kind of shoes he had on?

12 A. Some old, you know, old shoes.

13 Q. Okay, was it dress shoes or tennis shoes?

14 A. No, they were tennis shoes. You know, they, probably  
15 white. I remember they were white, but I didn't just, I didn't  
16 really pay that much attention to his shoes, you know.

17 Q. But you say they were old shoes?

18 A. Looked like pair of gym shoes maybe about a year old,  
19 you know, when you wear them, they start whopping on you and  
20 stuff like that, you know.

21 Q. All right, did you notice anything particular about  
22 the shoes other than them being worn?

23 A. No, I didn't.

24 Q. You are not related to Curtis Flowers any kind of  
25 way, are you?

26 A. No.

27 BY MR. BILLY GILMORE: Court indulge me one  
28 moment.

29 (Defense Counsel confer.)

1 BY MR. BILLY GILMORE: Tender the witness, Your  
2 Honor.

3 CROSS-EXAMINATION BY MR. HORAN:

4 Q. Mr. Glover, would it be safe to say that when-- would  
5 it be safe to say that on the same day, this same date, July  
6 the 16th, 1996, that Mr. Flowers would remember where he was as  
7 opposed to now, what you are saying? I mean would it be safe  
8 to say if he said he was at his sister's house at 11 o'clock,  
9 he would know if he was there? If he made that statement--

10 BY MR. BILLY GILMORE: --Your Honor, I'm going  
11 to object.

12 BY MR. HORAN:

13 Q. --on the 16th?

14 BY MR. BILLY GILMORE: This is not proper. He  
15 is trying to put words in his mouth.

16 BY THE COURT: He is on cross-examination.

17 BY MR. HORAN:

18 Q. Mr. Flowers would remember where he was when he was  
19 talked to on the 16th better than where, better than today what  
20 you are saying about where he was, would he not?

21 A. I guess so.

22 Q. And all these times that you have testified to, they  
23 are rough estimates; right?

24 A. Yeah.

25 Q. You said roughly this time or about this time?

26 A. Yeah.

27 Q. He stayed no more than ten minutes, stuff like that?

28 A. Yeah.

29 Q. You are not exact, are you?

1 A. No, I'm not exactly sure, but it was in that area.

2 Q. And you go to that house every day?

3 A. No, not every day.

4 Q. Pretty regular?

5 A. Well--

6 Q. You go to that house in the mornings pretty regular?

7 A. No, not.

8 BY MR. HORAN: Okay. Nothing further.

9 BY THE COURT: Redirect?

10 BY MR. BILLY GILMORE: No, Your Honor.

11 BY THE COURT: Is he finally excused?

12 BY MR. BILLY GILMORE: Yes, Your Honor.

13 BY THE COURT: You are free to leave.

14 WITNESS EXCUSED.

15 BY THE COURT: Who do you have next?

16 BY MR. BILLY GILMORE: Latoya Harding.

17 LATOYA HARDING,

18 a black female called to testify as a witness by the Defendant,  
19 having first been duly sworn by the Clerk, testified as  
20 follows, to-wit:

21 BY THE BAILIFF: Have a seat right up there.

22 BY MR. BILLY GILMORE: May I proceed, Your  
23 Honor?

24 DIRECT EXAMINATION BY MR. BILLY GILMORE:

25 Q. State your name, please.

26 A. Latoya Harding.

27 Q. Ms. Harding, if you would lean forward a little bit  
28 and speak into the mike and loud enough where everyone all the  
29 way down on this end can hear.

- 1 A. Latoya Harding.
- 2 Q. And where do you live, Ms. Harding?
- 3 A. In the State of Louisiana.
- 4 Q. And what town?
- 5 A. (No response).
- 6 Q. What town?
- 7 A. Saint Rose.
- 8 Q. And how long have you lived there?
- 9 A. About 9 years.
- 10 Q. Do you have occasion to come back to Mississippi to
- 11 visit friends and relatives?
- 12 A. Yes, sir.
- 13 Q. Okay, I'm going to call your attention to July 16th,
- 14 1996. Do you know whether or not you were in Mississippi at
- 15 that time?
- 16 A. Yes, sir. I was.
- 17 Q. And where were you?
- 18 A. At Priscilla Flowers' house.
- 19 Q. And where is that?
- 20 A. On Dennis Street.
- 21 Q. In what town? What town?
- 22 A. Winona.
- 23 Q. Okay. Are you related to Priscilla?
- 24 A. Yes, sir.
- 25 Q. What relation are you?
- 26 A. First cousin.
- 27 Q. First cousins? And how long had you been visiting
- 28 there with Priscilla?
- 29 A. About 3 to 4 months.

1 Q. I don't know whether you understood my question. How  
2 long had you been there that particular time?

3 A. Not long. About, I don't know; I'm not sure.

4 Q. Well, I mean did you come up for a day visit or two  
5 day visit or a week--

6 A. --It was the summer. The summer.

7 Q. You had been up for the summer?

8 A. Uh-hum.

9 Q. Okay. Were you living with Latoya at that time? I  
10 mean, I'm sorry; with Priscilla?

11 A. Yes, sir.

12 Q. You stay in the house with her?

13 A. Yes, sir.

14 Q. Okay, so you had been there for some time?

15 A. Uh-hum.

16 Q. All right. Now I want to call your attention to the  
17 morning of July 16th, 1996, say 8:30 in the morning. Do you  
18 know who was there?

19 A. Priscilla Flowers and Billy Glover.

20 Q. Were you present?

21 A. Yes, sir.

22 Q. All right, do you know about what time Mr. Glover got  
23 there?

24 A. It was about 8:30, about 8:40, something like that.

25 Q. Before 9 o'clock?

26 A. Yes, sir.

27 Q. Okay. Now did Priscilla have an occasion to leave  
28 that morning for any reason?

29 A. Yes. She had to go to court.

1 Q. And what time did she leave to go to court?

2 A. About 10 minutes before 9:00.

3 Q. Okay, how do you know it was 10 minutes before 9:00?

4 A. Because she said she had to be there for 9 o'clock,  
5 so she left early.

6 Q. Okay. Now is there any other way that you will know  
7 what time she left? Did you have a watch or clock or anything  
8 to look at?

9 A. She have a clock on her wall by the door.

10 Q. Did you look at that clock when she left?

11 A. Yes, sir.

12 Q. And what time was it?

13 A. About 8:30 -- no, about 8:40, yeah, around about that  
14 time.

15 Q. When she left?

16 A. Huh?

17 Q. When she left, I'm saying?

18 A. About 8:45, 8:50, something like that.

19 Q. Would that be like 15 or 10 minutes until 9:00?

20 A. Uh-hum.

21 Q. Okay, I'm sorry. So who was there when Priscilla  
22 left other than yourself?

23 A. Billy Glover was still there.

24 Q. He was still there? And did anybody else come there  
25 after that?

26 A. Curtis Flowers came.

27 Q. All right. Do you know when Curtis came over?

28 A. It was a few minutes after his sister left. About  
29 9:00, around about 9:00, a little bit after that.

1 Q. A little bit after 9:00?

2 A. Uh-hum.

3 Q. How long have you known Curtis Flowers?

4 A. A little while. I can't say for, well, long, well  
5 long as I can remember; just, I will say that.

6 Q. You knew him on that day?

7 A. Yes, sir.

8 Q. There is no doubt in your mind he came over there a  
9 little after 9:00 where you were?

10 A. He did come; yes.

11 Q. And now was this Priscilla Ward you are referring to?

12 A. Yes, sir.

13 Q. What street did she live in?

14 A. On Dennis Street.

15 Q. Okay, do you know how far that is from where Mr.  
16 Flowers lived at that time?

17 A. It was like right around the corner.

18 Q. Do you know why Mr. Flowers came over that morning?

19 A. No, not really. He come every morning. Well, since  
20 he wasn't working, he had.

21 Q. Okay, now do you know how long he stayed there that  
22 morning when he came over?

23 A. About 15, 20 minutes.

24 Q. Okay. So would that be somewhere close to 9:30 when  
25 he left?

26 BY MR. HORAN: Objection, Your Honor.

27 BY THE COURT: Sustained.

28 BY MR. BILLY GILMORE:

29 Q. Do you know about what time he left?

1           A.    Not exactly because he was outside at the moment  
2 talking to Billy Glover.

3           Q.    Okay. But he stayed there about 15 minutes?

4           A.    Uh-hum.

5           Q.    Do you remember how he was dressed that day?

6           A.    No, sir.

7           Q.    You don't remember?

8           A.    No, sir.

9           Q.    Do you remember whether he had on short pants or long  
10 pants?

11          A.    I really don't remember.

12          Q.    Now the day we are talking about, is that the same  
13 day the incident happened down at Tardy's Furniture?

14          A.    Yes, sir.

15          Q.    No doubt in your mind that was the same day?

16          A.    No doubt at all.

17          Q.    Did you see Curtis any more that day?

18          A.    Not that I recall.

19                   BY MR. BILLY GILMORE: Tender the witness.

20           CROSS-EXAMINATION BY MR. EVANS:

21          Q.    Ms. Harding?

22          A.    Yes, sir.

23          Q.    I want to make sure I understand. You are saying  
24 sometime that morning you saw Curtis come by his sister's  
25 house; is that right?

26          A.    Yes, sir.

27          Q.    And if I understood right, you are not sure about the  
28 time?

29          A.    Well, I know it was a little bit after his sister



1 left, and she had to be at court for 9:00.

2 Q. All right, and I believe the times that you have  
3 stated that she left are anywhere from 8:30 to 8:45 to 8:50; is  
4 that right?

5 A. Yeah, it was around about 8:45, 8:50.

6 Q. So sometime during that time period she left to go to  
7 court?

8 A. Yes, sir.

9 Q. And a few minutes after she left, Curtis came over  
10 there?

11 A. Yes, sir.

12 Q. And that's all you know about this case?

13 A. Well, I know that he came after 9:00 because  
14 Priscilla had been gone for a few-- well, it had been about 10  
15 or 20 minutes she had been gone.

16 Q. Well, was it a few minutes, or was it 10 or 20  
17 minutes?

18 A. It was about 10 or 20 minutes she had been gone.

19 Q. Well, if she left at 8:30, it would still be before  
20 9:00, wouldn't it? Why are you so positive it was after 9:00?  
21 Who told you that was an important time?

22 A. No one but I know she had to be at court for 9  
23 o'clock.

24 Q. All right.

25 A. And well, Mr. Glover, he was there for a little while  
26 before Priscilla left to go to her trial or wherever she had to  
27 go to court, whatever. So he was there already, and Priscilla,  
28 she said she had to go to court, be up there for 9:00. So she  
29 left, and around about that time, that was about 8:45 or 8:50.

1 Q. So whatever time she left, a few minutes later he  
2 came over there?

3 A. Yes, sir.

4 Q. And that's it? You are not saying that Curtis  
5 Flowers was not at Angelica leaning against Doyle Simpson's car  
6 at seven something in the morning, are you?

7 A. No, sir. I don't know that.

8 Q. Because you wasn't there?

9 A. No, sir.

10 Q. You are not saying that Curtis Flowers wasn't in  
11 Tardy Furniture somewhere around 10 o'clock that morning, are  
12 you?

13 A. No, sir.

14 Q. Because you weren't there?

15 A. No, sir.

16 Q. You are not saying that he wasn't behind Tardy  
17 Furniture running away from the store shortly after that, are  
18 you?

19 A. No, sir.

20 BY MR. BILLY GILMORE: Your Honor, I'm going to  
21 object to this line of questioning.

22 BY MR. EVANS:

23 Q. You don't know where he was and what he was doing at  
24 those times, do you?

25 A. No, sir.

26 BY MR. EVANS: Nothing further.

27 BY THE COURT: Redirect?

28 REDIRECT EXAMINATION BY MR. BILLY GILMORE:

29 Q. Ms. Harding, you are sure it was somewhere around 15

1 or 10 minutes to 9:00 when Priscilla left?

2 A. Yes, sir. It was like about 8:45 or something like  
3 that.

4 Q. Okay, and then you said it was somewhere 10 to 20  
5 minutes when Curtis Flowers came over?

6 A. Yes, sir.

7 Q. And he stayed there how long?

8 A. At least about 15 to 20 minutes.

9 Q. Okay. And then he left?

10 A. Yes, sir.

11 Q. You don't know anything else about what happened that  
12 day?

13 A. No, sir.

14 BY MR. BILLY GILMORE: No further questions.

15 BY THE COURT: Is she finally excused?

16 BY MR. BILLY GILMORE: Yes, Your Honor.

17 BY THE COURT: You may leave, ma'am.

18 WITNESS EXCUSED.

19 BY THE COURT: Who do you have next?

20 BY MR. BILLY GILMORE: Earl Campbell.

21 (Mr. Horan leaves the courtroom.)

22 EARL CAMPBELL,

23 a black male called to testify as a witness by the Defendant,  
24 having first been duly sworn by the Clerk, testified as  
25 follows, to-wit:

26 BY THE COURT: Have a seat up here. State your  
27 name for the record, please.

28 BY THE WITNESS: Earl Campbell.

29 BY MR. BILLY GILMORE: May I proceed, Your

1 Honor?

2 DIRECT EXAMINATION BY MR. BILLY GILMORE:

3 Q. Mr. Campbell, if you will lean forward and speak into  
4 the mike where everyone can hear you. You are Earl Campbell?

5 A. Yes, sir.

6 Q. And where do you live, Mr. Campbell?

7 A. In Winona.

8 Q. Where in Winona?

9 A. 304 Cage Street.

10 Q. And are you employed?

11 A. Yes, sir.

12 Q. Where are you employed?

13 A. KI, Krueger International.

14 Q. Krueger International. What type work is that? What  
15 type-- is that a factory?

16 A. Yes.

17 Q. What type manufacturing do they do?

18 A. We make table tops.

19 Q. Table tops. How long have you been employed there?

20 A. About two years.

21 Q. Do you know Curtis Flowers?

22 A. Yes, sir.

23 Q. Are you related to him?

24 A. Yes.

25 Q. What relation?

26 A. First cousin.

27 Q. First cousins. Do you see-- during, prior to July  
28 16th or around July 16th, 1996, did you see Curtis on a regular  
29 basis?

1 A. Well, no. I seen him off and on.

2 Q. All right. In a week's time how often would you see  
3 him?

4 A. About two or three days.

5 Q. Two or three times a week?

6 A. Uh-huh.

7 Q. Now Mr. Campbell, I want to ask you, have you seen  
8 Curtis Flowers-- first, let me ask you, do you know what a Fila  
9 shoe is?

10 A. Yes, sir.

11 Q. Is that also Grant Hill Fila, whatever? Are you  
12 familiar with that type shoe?

13 A. Yes, sir.

14 Q. All right. Within the last, well, prior to July  
15 16th, 1996, have you ever seen say in the past three years,  
16 have you seen Curtis Flowers wearing a Fila shoe?

17 A. Yeah, I have seen-- no. It has been about seven  
18 years since I seen him wearing Fila.

19 Q. Seven years?

20 A. Yeah.

21 Q. All right, within the last three or four years prior  
22 to July 16th, have you seen him wearing Fila?

23 A. No, sir.

24 Q. Now you said he wore some about seven years ago?

25 A. Yeah.

26 Q. Why is that fresh in your mind?

27 A. Because I had a pair. I remember, I had a red and  
28 white pair, and he had a purple and white pair.

29 Q. Okay, and that is how long ago?

1 A. About seven years. I was in 7th grade.

2 Q. You was in 7th grade?

3 A. Yes, sir.

4 Q. Y'all get shoes at the same time?

5 A. Yes.

6 Q. Okay. But now since then, have you seen him wearing  
7 any Fila tennis shoes?

8 A. No, sir.

9 Q. And you have seen him two or three times every week?

10 A. Yes.

11 Q. All right, more especially around July 16th, 1996,  
12 either before or after, have you seen Curtis Flowers wearing  
13 Fila tennis shoes?

14 A. No, sir.

15 Q. Has anybody else asked you about Fila tennis shoes?

16 A. Yes, sir.

17 Q. Who?

18 A. John Johnson.

19 Q. What did he ask you about?

20 A. He asked me had I ever seen Curtis wearing any Grant  
21 Hill Fila shoes.

22 Q. What did you tell him?

23 A. I told him no.

24 Q. Was there anything else said to you about those shoes  
25 by Mr. Johnson?

26 A. Yes, sir.

27 Q. What?

28 A. He told me if I find, can I go and find them Fila  
29 shoes Curtis had on that day that them folks down at Tardy's

1 got murdered, and he would give me 30 thousand dollars.

2 Q. Mr. Johnson told you that?

3 A. Yes, sir.

4 Q. All right, what was it he told you again?

5 A. He told me to go and find them shoes that Curtis had,  
6 that Curtis Flowers wore, and he would give me 30 thousand  
7 dollars. I told him I hadn't never seen him with no Grant Hill  
8 Fila shoes on.

9 Q. And when did Mr. Johnson ask you these questions?

10 A. I don't know. I guess he wanted me to find some  
11 shoes or something.

12 Q. I said when?

13 A. Uh, he questioned me one day over there in  
14 Greenwood. He come and picked me up from work. I don't  
15 remember the date.

16 Q. This was after July 16th, 1996?

17 A. Yes, sir.

18 Q. Did you tell him basically what you have told us  
19 today?

20 A. Yes, sir.

21 Q. About the shoes?

22 A. Yes, sir.

23 Q. What did you tell him about the reward?

24 A. Ain't, I can't do nothing with it. I don't know  
25 nothing.

26 Q. That's what you told him?

27 A. Yes, sir.

28 BY MR. BILLY GILMORE: Tender the witness.

29 (Mr. Horan returns to courtroom.)

CROSS-EXAMINATION BY MR. EVANS:

Q. Mr. Campbell, let me refresh your memory.

A. Yeah, refresh.

Q. It was August the 29th, 1996, that you talked to John Johnson. Do you remember that date?

A. That's right; uh-hum.

Q. And on that date you specifically told John Johnson that Curtis Flowers, you had seen him before the murders wearing Grant Hill Fila shoes, that you had seen him wearing them at least twelve times, but that he hadn't worn them since the murders. Isn't that true?

A. No, sir. And I told John Johnson the other day when he questioned me that he was telling a lie--

Q. --Would you stick with one question first?

A. Yeah.

BY MR. BILLY GILMORE: Your Honor, if the witness would be allowed to answer his--

BY THE COURT: You are going to have to let him give a complete answer to it, and then you can ask the next question. And I think he has now.

BY MR. EVANS:

Q. On August 29th, 1996, you said that you had seen him wearing these shoes at least twelve times; is that right?

A. No, sir. I did not tell him that.

Q. And Wayne Miller, Chief Investigator for the Greenwood District with the Mississippi Highway Patrol, was present when you told him that, wasn't he?

A. He was present, but I did not tell him that.

Q. And both of these people heard you say that, didn't



1 they?

2 BY MR. BILLY GILMORE: I object, Your Honor,  
3 what they heard. It's improper.

4 BY THE COURT: Overruled.

5 BY MR. EVANS:

6 Q. You can answer the question.

7 A. Anybody can come and tell a lie. Anybody can write  
8 things on paper that you ain't say--

9 Q. --And you--

10 A. --and record it.

11 Q. Are you finished?

12 A. Yeah.

13 Q. You are saying that these two trained investigators  
14 that between them probably have a total of 50 years in law  
15 enforcement would come up here and lie under oath about  
16 something you said?

17 A. I don't care they got 30. I know what I said.

18 Q. And this is your first cousin sitting over here?

19 A. That's right.

20 Q. And you don't want him to go to jail, do you?

21 A. If he-- I don't know nothing. Like I told you just,  
22 I don't know.

23 Q. You sure don't, do you?

24 BY MR. EVANS: No further questions.

25 REDIRECT EXAMINATION BY MR. BILLY GILMORE:

26 Q. You said Mr. Johnson has talked to you again since  
27 then?

28 A. Yes, sir.

29 Q. What did he tell you then?

1           A.    He just told me, he said, "Wayne Miller, me and Wayne  
2 Miller both heard you." I said no, I said, "I did not say  
3 that."

4           Q.    So you're saying you did not tell them that?

5           A.    Yes, sir.

6           Q.    Now has your testimony changed any time since they  
7 talked to you the first time as far as you are concerned?

8           A.    No.

9           Q.    So you didn't tell them that?

10          A.    I haven't told them nothing.

11          Q.    And you told them that, that you did not?

12          A.    No. I told them I ain't tell them nothing about  
13 that. I told them I don't even know nothing. He kept on  
14 trying to get questions out of me. I told him, I said, "I  
15 don't know nothing."

16          Q.    This was even after he offered you a reward?

17          A.    Yes, sir.

18                BY MR. BILLY GILMORE: No further questions.

19                BY THE COURT: Is he finally excused?

20                BY MR. BILLY GILMORE: Yes, Your Honor.

21                BY THE COURT: Mr. Campbell, you are free to  
22 leave.

23                        WITNESS EXCUSED.

24                BY THE COURT: Who do you have next?

25                BY MR. BILLY GILMORE: Kawill Jones.

26                        KAWILL JONES,

27 a black male called to testify as a witness by the Defendant,  
28 having first been duly sworn by the Clerk, testified as  
29 follows, to-wit:

1 BY THE COURT: State your name for the record,  
2 please.

3 BY THE WITNESS: Kawill Jones.

4 BY THE COURT REPORTER: Spell your first name,  
5 please.

6 BY THE WITNESS: K A W I L L.

7 BY MR. BILLY GILMORE: May I proceed, Your  
8 Honor?

9 BY THE COURT: Uh-hum.

10 DIRECT EXAMINATION BY MR. BILLY GILMORE:

11 Q. Now, Mr. Jones, if you would lean forward a little  
12 bit and talk in the microphone where everyone can hear you.  
13 What is your name?

14 A. Kawill Jones.

15 Q. Where do you live, Mr. Jones?

16 A. Winona.

17 Q. What street?

18 A. Bluff Spring.

19 Q. Is that out in the rural area?

20 A. Sir?

21 Q. Is that in the rural area or is that in town?

22 A. Out of town.

23 Q. Where are you employed?

24 A. Nowhere.

25 Q. Now are you related to Curtis Flowers?

26 A. Yes, sir.

27 Q. What relation?

28 A. Cousin.

29 Q. Now do you know Doyle Simpson?

1 A. Yes, sir.

2 Q. Did you ever have an occasion to be with Doyle  
3 Simpson when he purchased a pistol?

4 A. Yes, sir.

5 Q. Tell us about it.

6 BY MR. EVANS: Your Honor, that is not relevant.

7 BY MR. BILLY GILMORE: I think it is, Your  
8 Honor.

9 BY THE COURT: Let me see y'all up here.

10 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
11 THE JURY AS FOLLOWS:)

12 BY THE COURT: There is no controversy that  
13 Doyle owns the pistol.

14 BY MR. BILLY GILMORE: Well, he shouldn't have  
15 objected then, Your Honor.

16 BY MR. HORAN: We just did.

17 BY THE COURT: Well, now why is it relevant then  
18 if it's no, if it's not at issue?

19 BY MR. BILLY GILMORE: We will show where it  
20 came from.

21 BY THE COURT: What difference does it make?

22 BY MR. EVANS: That has already been proven with  
23 Doyle anyway.

24 BY MR. HORAN: It doesn't matter where he got  
25 it.

26 BY THE COURT: That is not relevant. I sustain  
27 the objection.

28 END BENCH CONFERENCE.

29 BY THE COURT: The objection is sustained.

1 BY MR. BILLY GILMORE:

2 Q. Mr. Jones, did you ever see a pistol in possession of  
3 Doyle Simpson?

4 A. Yes, sir--

5 BY MR. EVANS: --Your Honor, I object on  
6 relevancy. This is the same thing. None of this is  
7 relevant unless he can tie it in to the date of the  
8 crime.

9 BY THE COURT: I'm going to give him a little  
10 latitude to ask a couple more questions to see if he  
11 can tie it in. Then if he can't, then I will have  
12 the same ruling.

13 BY MR. BILLY GILMORE:

14 Q. Did you ever have that pistol in your hands?

15 A. Yes, sir.

16 Q. And why did you have the pistol?

17 BY MR. EVANS: Your Honor, he has got to show  
18 some relevancy to the date of this crime for this  
19 witness to be relevant.

20 BY THE COURT: How is this testimony relevant?

21 BY MR. BILLY GILMORE: Your Honor, there has  
22 been testimony previously about target practices, and  
23 that's what I'm getting into, that this witness  
24 actually target practiced and shot the gun himself.

25 BY THE COURT: But what difference would that  
26 make? That is not at issue. There is no controversy  
27 about it.

28 BY MR. BILLY GILMORE: No, sir.

29 BY THE COURT: I mean there is not, whether he

1 did or not is not at issue.

2 BY MR. BILLY GILMORE: Well, we are going to--

3 BY THE COURT: --Sustained. It's sustained.

4 BY MR. BILLY GILMORE:

5 Q. Do you remember the last time you saw this particular  
6 gun?

7 A. It was about March in '95.

8 BY MR. EVANS: Your Honor, I hate to keep having  
9 to object, but this is getting ridiculous. This is  
10 the same line of questioning that I have had to  
11 object to three times. I still object to this  
12 question.

13 BY MR. BILLY GILMORE: Your Honor, they raised  
14 the issue of the gun. We didn't.

15 BY THE COURT: Well, it's a question about when  
16 he last saw it. That might have some relevance.  
17 That objection is overruled.

18 BY MR. EVANS: But after his answer that he last  
19 saw it in March, that's why I objected because it  
20 definitely has no relevance.

21 BY THE COURT: Well, the objection is  
22 overruled. Go ahead.

23 BY MR. BILLY GILMORE:

24 Q. How often did you see Curtis Flowers prior to him  
25 being placed in jail?

26 A. Repeat that question.

27 Q. How often did you see Curtis Flowers prior to him  
28 being incarcerated in jail?

29 A. I seen him a lot.

1 Q. Well, say in a week's time, how many times did you  
2 see him in a week?

3 A. Probably, probably twice or three times a week.

4 Q. I will call your attention to July the 4th of 1996.  
5 Did you have an occasion to be around him then?

6 A. Yes, sir.

7 Q. And where was this?

8 A. Over by my grandmother's.

9 Q. Okay, and who is your grandmother?

10 A. Ruthie Mae Campbell.

11 Q. Does she live near Mr. Flowers' mother and father?

12 A. Yes, sir.

13 Q. What was the occasion? What were you doing over that  
14 day?

15 A. We were cooking out.

16 Q. Okay, was this kind of like a family cookout?

17 A. Yes, sir.

18 Q. And was it a good many people there?

19 A. Yes, sir.

20 Q. And was Curtis Flowers there?

21 A. Yes, sir.

22 Q. And what all were y'all doing besides cooking out?

23 A. Shooting fireworks.

24 Q. Now this is on July the 4th?

25 A. Yes, sir.

26 Q. Did you have another occasion after July the 4th to  
27 be over in that same vicinity?

28 A. Repeat that.

29 Q. Did you, were you over in that same area after July

1 the 4th?

2 A. Yes, sir.

3 Q. And when was this?

4 A. Probably a couple of weeks after or before then.

5 Q. All right. Who was present when you were there that  
6 time?

7 A. Me, Curtis, and Keith and some of my nephews and  
8 cousins.

9 Q. You are talking about Curtis Flowers?

10 A. Yes.

11 Q. Was this before or after the incident down at Tardy's  
12 Furniture?

13 A. Before.

14 Q. All right, do you remember what day of the week it  
15 was that you were there?

16 A. No, sir.

17 Q. Well, do you know in relation to the incident at  
18 Tardy's how far back it was?

19 A. Maybe a couple of days.

20 Q. Okay, what were you doing over there that time?

21 A. Shooting fireworks.

22 Q. Okay, what type fireworks were you shooting?

23 A. Bottle rockets.

24 Q. Were y'all playing any type game with the bottle  
25 rockets?

26 A. We shoot at each other with them.

27 Q. Could you describe to the Court what you are talking  
28 about?

29 A. We hold them in our hand, and we let them go at each



1 other.

2 Q. All right, would you light them?

3 A. Yes, sir.

4 Q. All right. Would the fire spew back on you?

5 A. Yes, sir.

6 Q. All of you doing that?

7 A. Yes, sir.

8 Q. Now I presume the fireworks has some kind of a powder  
9 to burn; is that right?

10 A. Yes.

11 Q. And you are saying that that firing powder would come  
12 back on your hands?

13 A. Yes, sir.

14 Q. Did Curtis Flowers do the same thing you have  
15 described?

16 A. Yes, sir.

17 Q. He was shooting the same type bottle rockets?

18 A. Yes, sir.

19 Q. Now did any of the investigators talk to you about  
20 shoes?

21 A. Yes, sir.

22 Q. Who?

23 A. John Johnson and Doug Evans.

24 Q. What did they ask you about the shoes?

25 A. Asked me did Curtis own a pair of Filas.

26 Q. What did you tell them?

27 A. I told him a pair of old white ones.

28 Q. Old white ones?

29 A. Yes, sir.

1 Q. Do you know if they were Filas or another brand?

2 A. I really don't know.

3 Q. So did you tell them he owned an old pair of Filas or  
4 just an old pair of shoes?

5 A. I said an old pair.

6 Q. Specifically, did you tell them he had a pair of Fila  
7 shoes at that time?

8 BY MR. EVANS: Your Honor, he has already  
9 answered this question. Opposing Counsel must have  
10 not liked his answer. I object to him leading--

11 BY THE COURT: --I believe you have asked that  
12 question, and he has answered it, Mr. Gilmore.

13 BY MR. BILLY GILMORE:

14 Q. I believe you said you saw Mr. Flowers at least two  
15 times a week?

16 A. Yes.

17 Q. Now in and around, before or after July 16th, 1996,  
18 within months prior to or after, did you see Curtis Flowers  
19 wearing Fila tennis shoes?

20 A. No, sir.

21 Q. What type tennis shoe did he normally wear, if you  
22 know?

23 A. Nikes.

24 Q. Was there any kind of promises made to you if you  
25 could come up with some shoes?

26 A. Yes, sir.

27 Q. Who made you promises?

28 A. John Johnson.

29 Q. What did he say?

1           A.    He told me if I can find some shoes, he will give me  
2   15 thousand dollars, or I can-- he would have it in an account,  
3   wouldn't nobody know about it. And he told me I can go to the  
4   Austin, Austin car lot and get me a car.

5           Q.    What did you tell him?

6           A.    I told him I didn't know nothing.

7                   BY MR. BILLY GILMORE: Court indulge me.

8                   (Defense Counsel confer.)

9   BY MR. BILLY GILMORE:

10           Q.   Mr. Jones, have you ever known Curtis Flowers to wear  
11   Fila tennis shoes?

12           A.    Once before, yes.

13           Q.    When was that?

14           A.    When we was working.

15           Q.    When?

16           A.    About three or four years ago.

17           Q.    Have you seen him wearing them since then?

18           A.    No, sir.

19                   BY MR. BILLY GILMORE: Tender the witness.

20   CROSS-EXAMINATION BY MR. EVANS:

21           Q.    Mr. Jones, how are you kin to Curtis?

22           A.    My cousin.

23           Q.    You are going to try to help your cousin?

24                   BY MR. BILLY GILMORE: I object, Your Honor.

25                   BY MR. EVANS: What grounds?

26                   BY THE COURT: What grounds?

27                   BY MR. BILLY GILMORE: He asked him going to  
28   help him, Your Honor, as if he is lying on the stand,  
29   insinuating he is lying.

1                   BY THE COURT: I think that's what he intended  
2                   to ask. Objection overruled.

3                   BY MR. EVANS: That's exactly what I intended to  
4                   ask.

5                   BY THE COURT: I have overruled the objection.

6                   BY MR. EVANS: Thank you, Your Honor.

7 BY MR. EVANS:

8                   Q. Are you wanting to help your cousin?

9                   A. No, sir.

10                  Q. Would it surprise you to know, Mr. Jones-- well, let  
11 me ask you this. You were talked to on August the 19th, 1996,  
12 weren't you?

13                  A. I don't know.

14                  Q. Well, if I tell you that's the date of your  
15 statement, would you agree with me?

16                  A. No, sir.

17                  Q. Well, let me hand it to you and let you look at it.

18 (Pause) The date is at the top.

19                  A. Yeah. I still wouldn't know.

20                  Q. You still wouldn't know after looking at this?

21                  A. Not when we talked, no, sir.

22                  Q. What date does it say at the top of your statement  
23 that y'all talked?

24                  A. It has got August 19th.

25                  Q. Thank you. Now do you know?

26                  A. (No response.)

27                  Q. Would it surprise you to know that it was quite a  
28 while after August the 19th before anybody even raised a reward  
29 in this case?

1 A. No, sir.

2 BY MR. EVANS: No further questions.

3 BY THE COURT: Redirect?

4 REDIRECT EXAMINATION BY MR. BILLY GILMORE:

5 Q. How many times has Mr. Johnson talked to you about  
6 this case?

7 A. Twice.

8 Q. Did he talk to you again after August 19th?

9 A. I wouldn't know. I wasn't keeping up with no dates.

10 Q. Well, did he talk to you after the time that Mr.  
11 Evans is referring to?

12 BY MR. EVANS: Your Honor, I object. He never  
13 mentioned a second statement until after I pinned him  
14 down on the date of the first one, and this is  
15 improper.

16 BY THE COURT: Overruled.

17 BY MR. BILLY GILMORE: No further questions.

18 BY THE COURT: Is he finally excused?

19 BY MR. BILLY GILMORE: Yes, Your Honor.

20 WITNESS EXCUSED.

21 BY THE COURT: Let me see y'all up here.

22 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
23 THE JURY AS FOLLOWS:)

24 BY THE COURT: How many more witnesses do y'all  
25 have?

26 BY MR. BILLY GILMORE: 5, 6, 7.

27 BY THE COURT: Is the next one going to be about  
28 this long?

29 BY MR. JOHN GILMORE: Probably.

1 BY THE COURT: You think so? Okay. Let's call  
2 him.

3 END BENCH CONFERENCE.

4 BY THE COURT: Who is it?

5 BY MR. BILLY GILMORE: Kittery Jones.

6 KITTERY JONES,

7 a black male having been called to testify as a witness by the  
8 Defendant, having first been duly sworn by the Clerk, testified  
9 as follows, to-wit:

10 BY THE COURT: State your name for the record.

11 BY THE WITNESS: Kittery Jones.

12 DIRECT EXAMINATION BY MR. BILLY GILMORE:

13 Q. How do you spell that first name?

14 A. K I T T E R Y.

15 Q. Where do you live, Mr. Jones?

16 A. Winona.

17 Q. Where in Winona?

18 A. Bluff Spring Road.

19 Q. Bluff Springs? If you would, speak loud enough so  
20 everyone all the way down on the end can hear you. How long  
21 have you lived on Bluff Springs Road?

22 A. All my life.

23 Q. Do you know Curtis Flowers?

24 A. Yes, sir.

25 Q. Are you related to him?

26 A. Yes, sir.

27 Q. What relation?

28 A. Cousin.

29 Q. Okay. I want to call your attention to July 16th,

1 1996. Do you know where you were when you first got word of  
2 the incident down at Tardy's Furniture?

3 A. At home.

4 Q. And how did you get word?

5 A. My mother called.

6 Q. And where does your mother, where was your mother at  
7 the time, if you know?

8 A. At work.

9 Q. And where does she work?

10 A. At the hospital.

11 Q. Okay. Now did anything else happen about the time  
12 you were talking to your mother?

13 A. Yes, sir. She told, asked me have I had the scanner  
14 on. I told her no. She told me to turn it up, and as soon as  
15 I turned it up, then I heard they say a gun had been stolen  
16 from Angelica's parking lot.

17 Q. Okay. Do you know if your mother was at work that  
18 day?

19 A. Yes, sir.

20 Q. And so she called you at the house?

21 A. Yes, sir.

22 Q. Do you live with your mother?

23 A. Yes, sir.

24 Q. And so as soon as you turned your scanner on, then  
25 you heard about a gun being stolen?

26 A. Yes, sir.

27 Q. Did you know whose gun it was at the time?

28 A. No, sir.

29 Q. Do you know Doyle Simpson?

1 A. Yes, sir.

2 Q. All right, immediately after hearing this, what did  
3 you do?

4 A. I sat down at the house for a while, and I sat there  
5 until I couldn't sit no more because I thought Curtis had been  
6 killed down there, and I got in my truck.

7 Q. If you would, speak slower and a little louder,  
8 please.

9 A. And I got in my truck, and I left and I went down  
10 there by his house, and I blew the horn and he came out. And I  
11 asked him had he, has he heard about it. He told me yeah; his  
12 daddy had told him.

13 Q. Okay, so when you heard the news, you thought it was  
14 Curtis that had been killed?

15 A. Yes, sir.

16 Q. Is that the reason you went to Curtis' house to see?

17 A. Yes, sir.

18 Q. And was he at home when you got there?

19 A. Yes, sir.

20 Q. Do you know about what time you got over there?

21 A. About lunch time.

22 Q. All right. Lunch time, I mean is that 11:00, 12:00--

23 BY MR. HORAN: --Objection, Your Honor--

24 BY MR. BILLY GILMORE:

25 Q. --1:00, what time?

26 A. It was about 12:00.

27 BY THE COURT: Sustained.

28 BY MR. BILLY GILMORE:

29 Q. What time?



1 A. It was in between about 11:30, 12 o'clock.

2 Q. 11:30, 12 o'clock? And he was there?

3 A. Yes, sir.

4 Q. Do you remember how he was dressed when you got  
5 there?

6 A. Yes, sir. He had a pair of shorts on and a towel  
7 around his neck.

8 Q. Did he have a shirt on?

9 A. No, sir.

10 Q. What kind of shorts did he have on?

11 A. I don't know.

12 Q. But they were short?

13 A. Yes, sir.

14 Q. Do you know what color they were?

15 A. No, sir.

16 Q. Do you know what kind of shoes he had on?

17 A. No, sir.

18 Q. But he had a towel around his neck?

19 A. Yes, sir.

20 Q. Do you know what he was doing?

21 BY MR. HORAN: Objection, Your Honor.

22 BY THE WITNESS:

23 A. He told me he was cooking.

24 BY MR. HORAN: Objection, Your Honor.

25 BY THE COURT: Overruled. What is the ground?

26 BY MR. HORAN: About what he was doing. He  
27 would have to have some personal knowledge. He can't  
28 get that through hearsay from the--

29 BY MR. BILLY GILMORE: --Well, if he was looking

1 at him, Your Honor, he should know.

2 BY THE COURT: Well, he is subject to  
3 cross-examination. Overruled.

4 BY MR. BILLY GILMORE:

5 Q. What was he doing?

6 A. He was cooking.

7 Q. How do you know he was cooking?

8 A. He told me he was.

9 Q. Other than the fact he told you, did you know whether  
10 he was cooking or not?

11 A. No, sir. I don't know. I didn't go in the house.

12 Q. Could you smell food cooking?

13 A. No, sir.

14 BY MR. HORAN: Objection, Your Honor. He needs  
15 to quit leading the witness about what he smelled and  
16 what he saw--

17 BY THE COURT: Yes, sir. You can't lead him  
18 now, Mr. Gilmore.

19 BY MR. BILLY GILMORE: Okay.

20 BY MR. BILLY GILMORE:

21 Q. But your main reason for going around there is  
22 because you thought it was him?

23 A. Yes, sir.

24 Q. And this was somewhere between 11:30 and 12:00?

25 A. Yes, sir.

26 Q. Now was this at the apartment on McNutt Street?

27 A. I don't know what street it is.

28 Q. Is that where he had been living for some time?

29 A. Yes, sir.

1 Q. Over in The Project?

2 A. Yes, sir.

3 Q. Is that the same place that Connie Moore lives?

4 A. Yes, sir.

5 Q. Is that his girlfriend?

6 A. Yes.

7 Q. Had you been there before?

8 A. Yes, sir.

9 Q. Okay, so same place you had been before is the same  
10 place you went that day?

11 A. Yes, sir.

12 Q. What type vehicle do you drive?

13 A. A 1995 Ford Ranger.

14 Q. And what color is it?

15 A. Sapphire blue.

16 Q. Is that kind of a purple?

17 A. Yes, sir.

18 Q. A lot of people refer to it as purple?

19 A. Yes, sir.

20 Q. Is that what you were in that day?

21 A. Yes, sir.

22 Q. Did you see anybody else around the house when you  
23 got over there?

24 A. No, sir.

25 Q. Okay. How long did you stay over there?

26 A. I will say roughly ten or fifteen minutes.

27 BY MR. BILLY GILMORE: Tender the witness.

28 BY MR. HORAN: No questions of this witness,

29 Your Honor.

1 BY THE COURT: Is he finally excused?

2 BY MR. BILLY GILMORE: Yes, Your Honor.

3 BY THE COURT: All right, sir. You may leave.

4 WITNESS EXCUSED.

5 BY THE COURT: Ladies and gentlemen, it's five  
6 until 12:00. We will take the lunch break now. We  
7 will start back at 1 o'clock. I will give you the  
8 same instructions that I have given you before every  
9 break.

10 (FOLLOWING THE NOON RECESS ON THURSDAY, OCTOBER  
11 16, 1997, COURT WAS RECONVENED AT 1:09 P.M. WITH ALL  
12 ATTORNEYS AND THE DEFENDANT PRESENT. WHILE WAITING  
13 FOR THE JURY TO BE BROUGHT IN, DEFENSE COUNSEL  
14 STEPPED OUT, AND THEN UPON THE JURY BEING SEATED IN  
15 THE BOX THERE WAS THE FOLLOWING:)

16 BY THE COURT: Where did they go?

17 BY MR. EVANS: We are ready, Your Honor.

18 BY THE COURT: I don't know. Mr. Frazier, will  
19 you find them for me?

20 BY THE BAILIFF: Yes, sir.

21 BY THE COURT: And while you are at it, ask them  
22 who they are going to call and bring that one too.

23 BY THE BAILIFF: All right, sir.

24 (Defense Counsel re-enter courtroom.)

25 BY MR. BILLY GILMORE: Call Archie Flowers, Your  
26 Honor.

27 BY THE COURT: Did he ask you who you were going  
28 to call, the Bailiff?

29 BY MR. BILLY GILMORE: Archie Flowers.

1                   BY THE COURT: I know, but did you tell the  
2                   Bailiff that?

3                   BY MR. BILLY GILMORE: Yes, sir. I told one of  
4                   them.

5                   BY THE COURT: That's fine.

6                   ARCHIE FLOWERS,  
7                   a black male having been called to testify as a witness by the  
8                   Defendant, having first been duly sworn by the Clerk, testified  
9                   as follows, to-wit:

10                  BY THE COURT: Have a seat right here.

11                  BY MR. BILLY GILMORE: May I proceed, Your  
12                  Honor?

13                  BY THE COURT: Yes.

14                  DIRECT EXAMINATION BY MR. BILLY GILMORE:

15                  Q. State your name, please.

16                  A. Archie Flowers.

17                  Q. Mr. Flowers, if you would lean forward and speak into  
18                  the mike where everybody can hear you.

19                  A. Archie Flowers.

20                  Q. Where do you live, Mr. Flowers?

21                  A. In Winona.

22                  Q. And how long have you lived in Winona?

23                  A. Practically all my life.

24                  Q. Okay, now are you related to Curtis Flowers?

25                  A. That's my son.

26                  Q. Now where are you employed there in Winona?

27                  A. Kelly's Stop and Go.

28                  Q. And how long have you been employed there?

29                  A. About 25 years.

1 Q. Mr. Flowers, I want to call your attention to the  
2 morning of July 16th, 1996. Do you remember where you were  
3 that particular day?

4 A. At the store.

5 Q. And were you working that day?

6 A. Yes, sir.

7 Q. Did you see your son Curtis that day?

8 A. Yes, sir. I see him every morning. He come by every  
9 morning.

10 Q. Okay, what about that particular morning?

11 A. Right. He come by.

12 Q. Do you know about what time he was there that  
13 morning?

14 A. I don't know what time it was. I never looked up at  
15 the clock.

16 Q. Let me ask you this. When he showed up, were you  
17 aware there had been something happened down at Tardy's  
18 Furniture Store?

19 A. There was a guy that came by the store and told me  
20 something had happened; somebody had got killed.

21 Q. All right, was this before or after Curtis was there?

22 A. It was before he got there.

23 Q. Okay, so then did you tell Curtis about this?

24 A. I told him that something happened down at the  
25 furniture store.

26 Q. So Curtis came by there after you had gotten word of  
27 the incident down at Tardy's Furniture?

28 A. Right.

29 Q. Was this before lunch time?

1 A. It was before lunch.

2 Q. Okay, but you don't know the exact time?

3 A. I do not.

4 Q. Do you remember what he purchased?

5 A. He bought some cigarettes and some chips, and I can't  
6 remember what else.

7 Q. All right, sir. Now how far does, did at the time,  
8 did Curtis Flowers live from where you live?

9 A. He live a good piece from me. The Project is a good  
10 piece from the store, about maybe a quarter of a mile or  
11 something; I don't know.

12 Q. Okay. Do you know what kind of vehicle Curtis had on  
13 July 16, 1996?

14 A. He didn't have a vehicle.

15 Q. Didn't have a vehicle. Had he had a pickup prior to  
16 that date?

17 A. No, sir.

18 Q. Okay. Now how often do you say you would see Curtis?

19 A. He come by every morning. We talks about singing,  
20 you know, because he sings.

21 Q. Y'all have a gospel group?

22 A. Right.

23 Q. Y'all travel around singing at churches?

24 A. Right.

25 BY MR. EVANS: Your Honor, I object on  
26 relevance. This hasn't got anything to do with this  
27 case.

28 BY THE COURT: Sustained.

29 BY MR. BILLY GILMORE:

1 Q. All right, but you would see him practically every  
2 day?

3 A. Every day.

4 Q. That is seven days a week?

5 A. That's right.

6 Q. All right, Mr. Flowers, in the last three or four  
7 years have you ever seen your son wear a Fila tennis shoe?

8 A. I have not.

9 Q. Do you know what type shoes he wears?

10 A. I never look at his feet.

11 Q. Okay. You don't know what kind of shoes he had on  
12 the morning he was up there?

13 A. I do not.

14 Q. You were behind the counter?

15 A. Right.

16 Q. But you never have seen him wearing Fila tennis  
17 shoes?

18 A. I have not.

19 BY MR. BILLY GILMORE: Tender the witness.

20 CROSS-EXAMINATION BY MR. EVANS:

21 Q. Mr. Flowers, do you remember talking with John  
22 Johnson, Robert Jennings, and Jack Matthews with the Highway  
23 Patrol?

24 A. No, I haven't talked to John Johnson.

25 Q. You don't even remember talking--

26 A. --I haven't talked--

27 Q. --to them on 8/19/96?

28 A. I haven't talked to them.

29 Q. So if the three of them said that all three of them



1 interviewed you, you don't remember it?

2 A. They haven't talked to me.

3 Q. On 8/19/96?

4 A. I haven't. John-- he hasn't even said nothing to me.

5 Q. How about Jack Matthews with the Highway Patrol?

6 A. He hasn't talked to me either.

7 Q. And Robert Jennings with the District Attorney's  
8 Office?

9 A. He hasn't talked to me.

10 Q. So you don't remember talking to any of them--

11 A. --I haven't--

12 Q. --on 8/19/96?

13 A. I haven't talked to either one of them.

14 BY MR. EVANS: No further questions.

15 REDIRECT EXAMINATION BY MR. BILLY GILMORE:

16 Q. Mr. Flowers, do you have a son named Archie?

17 A. Right.

18 Q. So there is more than one Archie Flowers?

19 A. That's right.

20 Q. So do you know whether or not they talked to him?

21 A. I don't know.

22 Q. But you know you didn't talk to them?

23 A. I didn't talk to neither one of them.

24 BY MR. BILLY GILMORE: No further questions.

25 BY THE COURT: Is he finally excused?

26 BY MR. EVANS: As far as the State is concerned,  
27 he is.

28 BY MR. BILLY GILMORE: Yes, sir.

29 BY THE COURT: You are free to go.

1 WITNESS EXCUSED.

2 BY THE COURT: Who do you have next?

3 BY MR. BILLY GILMORE: Call Marcus Moore.

4 BY THE BAILIFF: He did say Marcus and not  
5 Lemarcus?

6 BY THE COURT: He said Marcus; isn't that  
7 correct?

8 BY MR. BILLY GILMORE: Right.

9 MARCUS MOORE,

10 a black male having been called to testify as a witness by the  
11 Defendant, having first been duly sworn by the Clerk, testified  
12 as follows, to-wit:

13 BY THE COURT: State your name for the record.

14 BY THE WITNESS: Marcus Moore.

15 DIRECT EXAMINATION BY MR. BILLY GILMORE:

16 Q. Now Marcus, if you will lean forward like you are now  
17 and talk in that microphone where everybody can hear you. What  
18 is your full name?

19 A. Marcus Moore.

20 Q. Speak loud.

21 A. Marcus Moore.

22 Q. Marcus Moore. Where do you live, Marcus?

23 A. Winona, Mississippi.

24 Q. And who do you live with?

25 A. My daddy.

26 Q. And how long have you been living with your daddy?

27 A. About a year; a year and something.

28 Q. Do you remember about when you went to live with your  
29 daddy?

- 1 A. When I was 12.
- 2 Q. Okay. And how old are you now?
- 3 A. 13.
- 4 Q. You anticipated my next question, didn't you? Do you
- 5 remember what month you went to live with your father?
- 6 A. January the 15th.
- 7 Q. How do you know the specific day?
- 8 A. That was on Martin Luther King's birthday.
- 9 Q. And you were out of school that day?
- 10 A. Yes, sir.
- 11 Q. That was '97 or '96?
- 12 A. '95.
- 13 Q. '95 or '96?
- 14 A. '95.
- 15 Q. How long have you been living over there?
- 16 A. A year and some months.
- 17 Q. A year and some months?
- 18 A. Yes, sir.
- 19 Q. Well, wouldn't that be '96?
- 20 A. (Pause) Oh, yes, sir. Yes, sir.
- 21 Q. Okay. So your answer is January 15th of 1996?
- 22 A. Yes, sir.
- 23 Q. Where had you lived before then?
- 24 A. With my mom.
- 25 Q. And where was that?
- 26 A. McNutt Drive.
- 27 Q. McNutt Drive?
- 28 A. Yes, sir.
- 29 Q. There in Winona?

1 A. Yes, sir.

2 Q. Now you just wanted to go live with your daddy?

3 A. Yes, sir.

4 Q. Okay, it was all right with your mother to go over  
5 there?

6 A. I don't know. My mama came there; I see -- my mama  
7 was at work, and then I already had my clothes packed, and she  
8 didn't know I was going to leave.

9 Q. But she let you go on and move over there with your  
10 father?

11 A. Yes, sir.

12 Q. Now I see you are wearing a pair of Fila shoes. You  
13 like those shoes?

14 A. Yes, sir.

15 Q. Have you had other Fila shoes besides those?

16 A. These are the only ones I have.

17 Q. Only ones you have now?

18 A. Yes, sir.

19 Q. Have you ever had any before you got these?

20 A. No, sir.

21 Q. You didn't. Your mother didn't buy you some before  
22 you went over to live with your father?

23 A. No, sir.

24 Q. Do you remember talking to me last week?

25 A. Yeah.

26 Q. Did you tell me last week your mother bought you a  
27 pair of Fila shoes?

28 A. That was when I was over there, when I was living  
29 with her.

1 Q. Okay, I'm sorry; I may have mis-- when you were  
2 living with your mother, did she buy you a pair of Fila shoes?  
3 A. Yes, sir.  
4 Q. Is that yes?  
5 A. (Witness nods his head.)  
6 Q. And how long is that before you went to live with  
7 your father?  
8 A. I don't know.  
9 Q. When you moved over to your father's house, did you  
10 carry your shoes with you?  
11 A. No, sir.  
12 Q. What happened to them?  
13 A. I didn't have no shoes when I went over to my dad's  
14 house.  
15 Q. You didn't have any shoes?  
16 A. No, sir.  
17 Q. When did you get the Fila shoes that your mother  
18 bought for you?  
19 A. I don't know. I can't remember.  
20 Q. Okay, do you remember talking to me last week about  
21 it?  
22 A. Yes, sir.  
23 Q. What did you tell me last week you did with those  
24 shoes?  
25 A. Probably throwed them in the garbage can.  
26 Q. You throwed them in the garbage can. All right,  
27 where were you living when you threw them in the garbage can?  
28 A. I can't remember because when I went over to my  
29 daddy's house, I didn't have no shoes.

1 Q. You didn't have any shoes?

2 A. No, sir.

3 Q. Well, when did you throw the shoes in the garbage  
4 can?

5 A. I don't know.

6 Q. Don't know. Well, when you say in the garbage can,  
7 you are talking about out on the street or a dumpster, or what  
8 are you talking about?

9 A. A garbage, probably a garbage can like the garbage  
10 can they come pick up garbage.

11 Q. Out on the street? Well, was that at your mother's  
12 house or your daddy's house you threw them in the garbage can?

13 A. It wasn't at my daddy's house because I didn't have  
14 no shoes over there.

15 Q. Didn't have any shoes over there?

16 A. No, sir.

17 Q. Well, do you know about how far before you went to  
18 live with your daddy you threw the shoes away?

19 A. No, sir.

20 Q. Okay. But you went over to your daddy's house in  
21 January 15th of '96; is that right?

22 A. Yes, sir.

23 Q. And you had already thrown the shoes away in the  
24 garbage can?

25 A. Yes, sir.

26 Q. Why did you throw them away, Marcus?

27 A. They were too small for me.

28 Q. Your foot is growing pretty fast, isn't it?

29 A. Yes, sir.

- 1 Q. What size you wear now?
- 2 A. 13.
- 3 Q. 13?
- 4 A. Yes, sir.
- 5 Q. Okay, is that what you got on now, a 13?
- 6 A. Yes, sir.
- 7 Q. Okay. But now when you first got those that your
- 8 mother bought, did they fit you all right then?
- 9 A. That was when I, when I-- they were tight.
- 10 Q. Do you remember how long you wore them before you
- 11 threw them away?
- 12 A. (Witness shakes his head.) I don't keep up with
- 13 stuff like that.
- 14 Q. It wasn't important to you, was it?
- 15 A. No, sir.
- 16 Q. But you wore them a while and then threw them away?
- 17 A. Yes, sir.
- 18 Q. All right, after you threw them away in the garbage
- 19 can, did you ever see them any more?
- 20 A. No.
- 21 Q. They were gone after that?
- 22 A. Yes, sir.
- 23 Q. And the next time you got a pair of Fila shoes are
- 24 the ones you have got on now?
- 25 A. Yes, sir.
- 26 Q. What color were those shoes that your mother bought
- 27 you, those Fila shoes? What color were they?
- 28 A. I can't remember.
- 29 Q. You don't remember what color they were?

1 A. No.

2 Q. Did they have "Fila" wrote on the side of them?

3 A. Yes, sir.

4 Q. You know it was a Fila shoe?

5 A. Yes, sir.

6 Q. Okay. But you don't remember-- were they all solid  
7 color or were they--

8 BY MR. EVANS: --I object to him leading the  
9 witness.

10 BY THE COURT: Sustained.

11 BY MR. BILLY GILMORE:

12 Q. Were they solid color?

13 A. I can't remember.

14 Q. You don't remember.

15 BY MR. BILLY GILMORE: Court indulge me one  
16 moment.

17 (Defense Counsel confer along with Defendant.)

18 BY MR. BILLY GILMORE:

19 Q. You are a ball player, aren't you, Marcus?

20 A. Sir?

21 Q. You are a ball player, aren't you? You play ball?

22 A. Yes, sir.

23 Q. Okay. Do you know what a Grant Hill Fila is?

24 A. Yes, sir.

25 Q. Was that the type shoe that you had?

26 A. Yes, sir.

27 Q. Okay, had you had any Grant Hill Filas before your  
28 mother bought that pair for you?

29 A. No, sir.



1 Q. Okay, and then you have got this pair on now is the  
2 only other pair you have ever had?

3 A. Yes, sir.

4 Q. And they are size 13?

5 A. Yes, sir.

6 BY MR. BILLY GILMORE: Tender the witness.

7 CROSS-EXAMINATION BY MR. EVANS:

8 Q. Hey, Marcus. Marcus, you remember an investigator  
9 for the District Attorney's Office checking your shoe size  
10 right after these murders happened?

11 A. No, sir.

12 Q. You don't remember going to the police department and  
13 taking your shoe off so that somebody could check what size it  
14 was?

15 A. No, sir.

16 Q. Well, is it some reason you wouldn't remember  
17 something like that?

18 A. I don't remember y'all doing that.

19 Q. You don't remember?

20 A. No, sir.

21 Q. And were you wearing a size 12 shoe; isn't that  
22 right?

23 BY MR. BILLY GILMORE: I object to hearsay. I  
24 mean he is testifying--

25 BY MR. EVANS: --How is that hearsay?

26 BY THE COURT: It's not-- wait a minute.

27 BY MR. BILLY GILMORE: He is testifying--  
28 testifying.

29 BY THE COURT: It's not. Overruled.

1 BY MR. EVANS:

2 Q. You were wearing a size 12 shoe, weren't you?

3 A. Yes, sir.

4 Q. Do you remember-- do you see Mr. Bleck sitting right  
5 over here at the end of the table?

6 A. Yes, sir.

7 Q. He is one of my assistants. Do you remember talking  
8 with him today?

9 A. Yes, sir.

10 Q. Do you remember telling him that your mother had  
11 never bought you a pair of Fila tennis shoes?

12 A. She, she hadn't bought me some when I was living with  
13 my daddy, but she bought me some before.

14 Q. Do you remember telling Mr. Bleck today in this  
15 courthouse that your mother has never bought you a pair of Fila  
16 tennis shoes?

17 A. Yes, sir.

18 Q. You remember telling him that?

19 A. Yes, sir.

20 Q. Has your mother asked you to lie for Curtis?

21 A. No, sir.

22 Q. Has anybody asked you to lie for Curtis?

23 A. No, sir.

24 Q. Well, why are you coming up here saying that now?

25 A. Well, my mama, she bought me some before I moved with  
26 my daddy though.

27 Q. But you admit that you told Mr. Bleck this morning in  
28 this courthouse that your mother had never bought you a pair of  
29 Fila tennis shoes?

1 A. She have.

2 Q. That is not my question. My question is do you admit  
3 that you told him that in this courthouse today?

4 A. Yes, sir.

5 Q. Well, when in the world are you lying? Now or then?

6 A. I ain't lying.

7 Q. Well, you are lying one time or the other. Which is  
8 it?

9 A. She bought me a pair of Fila.

10 Q. Well, why did you lie to Mr. Bleck this morning?

11 BY MR. BILLY GILMORE: Your Honor, I'm going to  
12 object to him calling him a liar.

13 BY MR. EVANS: Well, I think it is very obvious  
14 he has lied one time or the other.

15 BY THE COURT: No, I think he has explained his  
16 answer in a way that that is not necessarily a  
17 correct conclusion.

18 BY MR. EVANS:

19 Q. Did you lie to Mr. Bleck this morning?

20 A. Yes, sir.

21 Q. All right. Now that you, it is proven that you are  
22 lying; why were you lying to him?

23 A. My mama did buy me a pair of Filas.

24 Q. That is not my question. Why were you lying up here?

25 A. I ain't lying.

26 BY MR. EVANS: I don't have any questions of  
27 this witness, Your Honor.

28 REDIRECT EXAMINATION BY MR. BILLY GILMORE:

29 Q. Marcus, has your mother bought you any shoes since

1 you went to live with your father?

2 A. No, sir.

3 Q. Did she buy you any shoes before you went to live  
4 with your father?

5 A. Yes, sir.

6 Q. Did she, in fact, buy you a pair of Grant Hill Fila  
7 shoes?

8 A. Yes, sir.

9 Q. Okay. And do you know about when that was?

10 A. No, sir.

11 Q. But it was before you went to live with your father?

12 A. Yes, sir.

13 Q. Okay. And that's the pair of shoes you told me you  
14 threw in the garbage can before you even moved to your  
15 father's?

16 A. Yes, sir.

17 Q. Haven't seen them since then?

18 A. Yes, sir.

19 BY MR. BILLY GILMORE: No further questions.

20 BY THE COURT: Is he finally excused?

21 BY MR. EVANS: As far as the State is concerned,  
22 he is.

23 BY MR. BILLY GILMORE: Yes, sir.

24 BY THE COURT: Okay, you are ready to go, son.

25 WITNESS EXCUSED.

26 BY THE COURT: Who do you have next?

27 BY MR. BILLY GILMORE: Your Honor, could we have  
28 a short recess?

29 BY THE COURT: Not if you have got witnesses

1 here; let's go.

2 BY MR. BILLY GILMORE: I have got to see about a  
3 witness to see if they are here or not.

4 BY THE COURT: Okay, I will give you about two  
5 minutes to check on that.

6 (Defense Counsel left the courtroom, and as a  
7 couple of people got up to leave the courtroom, there  
8 was the following:)

9 BY MR. EVANS: Your Honor, I would like to make  
10 a record of who is being called out just in case they  
11 intend to call them to the stand.

12 BY THE COURT: Sir, would you get her name?

13 BY THE BAILIFF: Lola Flowers.

14 (Pause.)

15 BY THE COURT: Mr. McIntyre, tell Mr. Gilmore I  
16 am ready to go.

17 BY BAILIFF McINTYRE: Yes, sir.

18 (Mr. McIntyre left the courtroom briefly, and  
19 upon his return there was the following:)

20 BY BAILIFF McINTYRE: He was told, sir.

21 BY THE COURT: Thank you, sir.

22 (Mr. Billy Gilmore returns to the courtroom.)

23 BY MR. BILLY GILMORE: Your Honor, the witness  
24 that we were looking for is not here yet. The  
25 witness is on the way.

26 BY THE COURT: Has the witness been subpoenaed?

27 BY MR. BILLY GILMORE: No, sir. This is the  
28 witness we just talked to the Court about.

29 BY THE COURT: Ladies and gentlemen, I am going

1 to take a break right now. It will be about ten  
2 minutes. I have got a matter I have got to tend to  
3 in chambers. Let's go.

4 (WHEREUPON THE COURT, ALL COUNSEL, THE DEFENDANT  
5 AND THE COURT REPORTER WENT TO CHAMBERS OUT OF THE  
6 PRESENCE OF THE JURY FOR THE FOLLOWING:)

7 BY THE COURT: You need to put your situation in  
8 the record.

9 BY MR. BILLY GILMORE: All right, Your Honor,  
10 we--

11 BY THE COURT: --First, let me ask you this. Do  
12 you have any other witnesses that are here?

13 BY MR. BILLY GILMORE: One that we don't want to  
14 put on right at this point until the other  
15 witnesses--

16 BY THE COURT: --You are to the point if they  
17 are here now. Anyhow, you finish what you are going  
18 to say.

19 BY MR. BILLY GILMORE: Okay. We preferred not  
20 to put that witness on until--

21 (THE CIRCUIT CLERK, MS. LOFTIN, ENTERED THE  
22 ROOM.)

23 BY THE COURT: --Excuse me.

24 BY CIRCUIT CLERK, MS. LOFTIN: --Excuse me. They  
25 have called from Leflore County. They still haven't  
26 found Mr. Frederick Veal.

27 BY THE COURT: Veal.

28 BY CIRCUIT CLERK, MS. LOFTIN: They are still  
29 looking, but they haven't found him yet.

1 BY THE COURT: Okay.

2 BY MR. BILLY GILMORE: While we are speaking  
3 about Mr. Veal, in the event that he is brought, I  
4 would like to take him whenever he comes, whether  
5 it's out of turn or not.

6 BY THE COURT: You can do that, but the  
7 likelihood of him getting here is not good at this  
8 point in time if they haven't served him. But yeah,  
9 we will do that. If he gets here, we will put him  
10 on, providing the jury is not out. Okay.

11 BY MR. BILLY GILMORE: All right, we have a  
12 witness we just became aware of. We advised the  
13 Court and the District Attorney, and that witness is  
14 on the way.

15 BY THE COURT: From where?

16 BY MR. BILLY GILMORE: From Winona.

17 BY THE COURT: When did they leave?

18 BY MR. BILLY GILMORE: Probably--

19 BY MR. JOHN GILMORE: During the lunch hour; I'm  
20 not sure exactly when.

21 BY THE COURT: Are you sure they are on the  
22 way?

23 BY MR. BILLY GILMORE: That's what I am advised,  
24 Your Honor.

25 BY THE COURT: By who?

26 BY MR. BILLY GILMORE: By the people that talked  
27 to them.

28 BY THE COURT: Who is that?

29 BY MR. BILLY GILMORE: Ms. Flowers.

1 BY THE COURT: Ms. Lola Flowers?

2 BY MR. BILLY GILMORE: Yes, sir.

3 BY THE COURT: Who is the witness?

4 BY MR. BILLY GILMORE: She is a Fleming.

5 BY MR. JOHN GILMORE: Mary Ellen Fleming and  
6 Neecie Fleming. From the way I understand, they are  
7 the sisters of Clemmie Fleming, and they have  
8 voluntarily come forward and intend to testify that  
9 Clemmie Fleming was lying on the stand and has stated  
10 that she did so for the reward.

11 BY THE COURT: Who told you that? Did they tell  
12 you that?

13 BY MR. JOHN GILMORE: We haven't talked to them.

14 BY MR. BILLY GILMORE: They told--

15 BY THE COURT: --How come y'all didn't talk to  
16 them?

17 BY MR. BILLY GILMORE: Your Honor, they just  
18 became-- we just became aware of these witnesses.  
19 They just came forward evidently today.

20 BY THE COURT: Well, somebody had to tell them  
21 to be here. Who told them to be here?

22 BY MR. JOHN GILMORE: We told--

23 BY THE COURT: --Why haven't y'all talked to  
24 them.

25 BY MR. JOHN GILMORE: They had to go pick them  
26 up and bring them.

27 BY MR. BILLY GILMORE: As soon as we were aware  
28 that these were possible witnesses, we asked them to  
29 bring them immediately, and they are en route here.



1 BY THE COURT: Go get Ms. Flowers.

2 (Deputy leaves chambers.)

3 BY MR. EVANS: Your Honor, I never did  
4 understand on the Court's question while ago. Are we  
5 led to believe that there are no other witnesses here  
6 that are going to be called?

7 BY THE COURT: He said he has got one here, but  
8 he doesn't want to call her out of time. I will get  
9 back to that though.

10 (LOLA FLOWERS ENTERS CHAMBERS.)

11 BY THE COURT: You are Lola Flowers?

12 BY MS. FLOWERS: Yes.

13 BY THE COURT: Raise your right hand.

14 LOLA FLOWERS,

15 a black female called into chambers out of the presence of the  
16 jury to testify before the Court, having first been duly sworn  
17 by the Court, testified as follows:

18 EXAMINATION BY THE COURT:

19 Q. All right, what kin are you to the Defendant?

20 A. His mother.

21 Q. Okay. Did you supply some information to Mr. Gilmore  
22 about other witnesses?

23 A. Right.

24 Q. When did you do that?

25 A. A little while ago.

26 Q. When did you find out that information?

27 A. I called home about 20 minutes to 1:00, and my  
28 daughter told me that Mary Ellen Fleming had called over there  
29 and said that her sister had told a story. And she and her

1 sister Neechie would come up here and swear to it, that Clemmie  
2 was at home in the bed.

3 Q. Did you know that that was-- did you know about that  
4 before today?

5 A. No.

6 Q. Do you know whether or not they have left?

7 A. Yeah. They have. I called back home.

8 Q. When did they leave?

9 A. Approximately about 1:30.

10 Q. 1:30. That is ten minutes ago.

11 A. Well.

12 Q. That's when they left?

13 BY MR. HORAN: Your Honor, I want to clear  
14 something up. Their testimony is going to be not  
15 that Clemmie lied but that Clemmie was in the bed at  
16 the time? Is that what they are going to testify--

17 BY THE WITNESS:

18 A. --that she wasn't downtown and she didn't--

19 BY THE COURT: --well, that she lied; if she was  
20 in bed, obviously, it would be a lie about the other.

21 BY MR. HORAN: Right.

22 BY MR. EVANS: Which is even in conflict with  
23 their own witness they put on.

24 BY MR. JOHN GILMORE: Well, not necessarily.  
25 That witness--

26 BY THE COURT: --Ms. Flowers, you can go out.

27 WITNESS LEAVES CHAMBERS.

28 BY MR. JOHN GILMORE: That witness definitely  
29 put on testimony that what she told on the stand was

1 not true.

2 BY THE COURT: I don't know which witness you  
3 are talking about. If you are talking about the guy  
4 that was driving her around, he directly testified  
5 that not only was she in the vehicle with him, that  
6 she saw Mr. Flowers running from, running from the  
7 proximity near the scene, and that she identified to  
8 him the Defendant.

9 BY MR. BILLY GILMORE: Your Honor, I believe  
10 though if you go back and look at the question back  
11 that John Johnson took--

12 BY MR. HORAN: That is not the point. It's his  
13 testimony--

14 BY THE COURT: His testimony today in court is  
15 consistent with the testimony of Clemmie Fleming.

16 BY MR. JOHN GILMORE: Clemmie Fleming testified  
17 that they went down by Tardy Furniture, turned right  
18 on Carrollton, and saw the Defendant running down  
19 Carrollton Street. Mr. Harris testified that they  
20 did not go down by Tardy Furniture--

21 BY THE COURT: Okay, but he testified that she  
22 was in his vehicle at a time these other witnesses  
23 are going to say that she was in the bed.

24 BY MR. BILLY GILMORE: But Your Honor--

25 BY THE COURT: Now that may be where the lie is  
26 right there.

27 BY MR. HORAN: From somebody.

28 BY THE COURT: Yeah, somebody is lying.

29 BY MR. EVANS: Or wanting to.

1 BY THE COURT: Yeah.

2 BY MR. BILLY GILMORE: Well, it also brings up a  
3 possibility was she telling the truth if that was  
4 Curtis Flowers or not. I mean Mr. Harris said he  
5 didn't know him from Adam's house cat.

6 BY MR. EVANS: No, that doesn't put that in  
7 issue if he says she was there.

8 BY MR. BILLY GILMORE: I think it does put it in  
9 issue. I mean he did not know Curtis Flowers.

10 BY MR. HORAN: He didn't say it wasn't Curtis.  
11 All he said was that she identified Curtis Flowers as  
12 being the person running on Church Street pretty  
13 close to Carrollton, and he admitted that he told Mr.  
14 Johnson that he was on Front Street. This is  
15 completely--

16 BY MR. JOHN GILMORE: --We are not denying that  
17 he was on Front Street, but he turned before he got  
18 to the furniture store.

19 BY MR. EVANS: That hasn't got anything to do  
20 with these two witnesses.

21 BY THE COURT: What we are stuck with is whether  
22 I have got to wait two hours on them to get here on  
23 people that haven't even been subpoenaed, nobody has  
24 investigated about or found out anything about in six  
25 months.

26 BY MR. EVANS: Plus I understand there is  
27 another witness, at least one more witness that they  
28 intend to call to the stand.

29 BY MR. BILLY GILMORE: Well, we have got Mr.

1 Haymore on standby.

2 BY MR. EVANS: No, we don't have him on standby  
3 either.

4 BY THE COURT: Whatever witnesses that you have  
5 here, you have got to put on now because I don't even  
6 know if these people are coming. Y'all can't even  
7 confirm that they are coming. Ms. Flowers can't even  
8 confirm that they are coming. And I have got no way  
9 -- apparently they are not going to be able to serve  
10 Veal, and I have already said we are not going to  
11 wait on him.

12 BY MR. HORAN: They left at 1:30, Your Honor.  
13 Assuming--

14 BY THE COURT: --Well, I mean I don't understand  
15 why if y'all found out about this at lunch, why they  
16 waited until 1:30 to come. Now y'all are just not  
17 tending to business.

18 BY MR. BILLY GILMORE: Well, they had to go back  
19 and get them to bring them, Judge.

20 BY MR. EVANS: Go pay them.

21 BY MR. BILLY GILMORE: I mean their own sister's  
22 flesh and blood came up and said their sister is  
23 lying for the reward. I mean it's important to me.

24 BY MR. EVANS: They haven't said anything.

25 BY THE COURT: No, they have not said anything.

26 BY MR. BILLY GILMORE: Well, that is my  
27 understanding.

28 BY THE COURT: Ms. Flowers didn't even say that  
29 they said anything.

1 BY MR. EVANS: You are the only one that said  
2 that.

3 BY MR. BILLY GILMORE: --Well, Ms. Flowers--

4 BY MR. EVANS: --And you have already admitted  
5 that you didn't talk to them.

6 BY MR. BILLY GILMORE: Ms. Flowers communicated  
7 that to us. That's the way we got the message.

8 BY MR. HORAN: Ms. Flowers, that's correct, but  
9 she communicated it; it came from a third party,  
10 another individual that says that is what they are  
11 going to say. It's nothing here to say that they are  
12 going to testify to that. This is squirrel hunters  
13 in the woods kind of stuff.

14 BY MR. EVANS: An attempt to delay the trial and  
15 there is no reason to delay the trial.

16 BY MR. BILLY GILMORE: Well, the trial is  
17 running ahead of schedule from what we anticipated.  
18 So--

19 BY THE COURT: --So what do we want to do? Just  
20 wait a couple of days until we catch up with our  
21 schedule? All right, y'all give me a few minutes.

22 (ALL COUNSEL AND THE DEFENDANT LEFT CHAMBERS.  
23 FOLLOWING A BREAK, PROCEEDINGS IN CHAMBERS CONTINUED  
24 WITH ALL COUNSEL AND THE DEFENDANT PRESENT:)

25 BY THE COURT: Without concerning yourselves at  
26 this point in time about Veal and these two Fleming  
27 ladies, just for the sake of argument; if they  
28 weren't involved and understanding that you don't  
29 know, that he says he has got one more witness that

1 is here, which I assume will be the last one, if that  
2 is it, do y'all have rebuttal?

3 BY MR. EVANS: At this point probably not, Your  
4 Honor.

5 BY THE COURT: Okay.

6 BY MR. JOHN GILMORE: Does that mean you don't  
7 have it for today, or you are not going to have it?

8 BY THE COURT: No, we are through is what he's  
9 saying.

10 BY MR. EVANS: If y'all are fixing to rest, I am  
11 fixing to rest. We are ready to turn it over to the  
12 jury.

13 BY MR. BILLY GILMORE: Well, of course, we want  
14 those witnesses. And if we are this close to the  
15 end, then I would move for a recess until in the  
16 morning--

17 BY THE COURT: You have got no chance of that.

18 BY MR. HORAN: Judge, can I-- all I want to say  
19 is that what we understand about this statement, half  
20 of it is not relevant. Ms. Flowers made her own  
21 statement--

22 BY THE COURT: --I understand that, Mr. Horan.  
23 I have got no problem about that. I understand  
24 everybody bit of that. How far is it from Winona?

25 BY MR. HORAN: Two hours.

26 BY MR. BILLY GILMORE: Your Honor, we will talk  
27 to those witnesses as soon as they get here.

28 BY THE COURT: Oh, yeah. Don't worry; don't be  
29 telling me what y'all are going to do. I'm going to

1 tell y'all what y'all are going to do if they get  
2 here.

3 BY MR. HORAN: We have got to get Clemmie back.

4 BY THE COURT: Huh?

5 BY MR. HORAN: Get Clemmie back.

6 BY MR. EVANS: If they are allowed to get those,  
7 and she has been released by both sides.

8 BY MR. HORAN: Get back to the predicate. He  
9 hasn't laid the predicate to impeach a witness. You  
10 can't ask them about questions that you didn't try to  
11 impeach them on.

12 BY THE COURT: Well, that doesn't fall within  
13 the rule, this rule. That is talking about  
14 statements. This is not statements.

15 BY MR. HORAN: It's going to be a statement--

16 BY THE COURT: --Well, it's not in the rule.  
17 Okay, here is what I'm going to do. We are going to  
18 take whatever witnesses you have got here, and we are  
19 going to do them now. When we have completed that,  
20 then I'm going to-- we are going to take a recess,  
21 and we are going to work on some instructions for  
22 about an hour until between 3:30 and 4 o'clock. If  
23 they have not arrived between 3:30 and 4 o'clock, I'm  
24 going to take it to mean that they are not coming,  
25 and we are going to finish this trial. And that's  
26 the best I know what to do. And that may not be the  
27 best thing, but that's what I'm going to do.

28 BY MR. EVANS: Are y'all ready?

29 BY THE COURT: And if that puts you in a



1 situation where you have to get Clemmie and stuff  
2 like that, then I'm going to give y'all the  
3 opportunity to do that just like I'm giving them the  
4 opportunity to do this.

5 BY MR. EVANS: Yes, sir.

6 BY THE COURT: Even if it delays it, I will just  
7 have to delay it.

8 BY MR. BILLY GILMORE: Well, Your Honor, we  
9 would also like the opportunity to have the delay to  
10 get Veal over here.

11 BY THE COURT: No, you had a chance to do that.  
12 I'm only doing this because of the testimony, of your  
13 statement to me and the testimony of Ms. Flowers here  
14 today that nobody knew about this evidence until this  
15 morning. And there is no indication that you could  
16 have known about it other than today.  
17 On Veal, you should have, you could have and should  
18 have known about that. By investigating this matter,  
19 you would have known about that. You released him.  
20 He has been here. You released him, and we are not  
21 going to continue it to wait for Veal. I have issued  
22 an instanter subpoena. If they serve it and he gets  
23 here, that's fine. We are not going to tomorrow to  
24 wait on him.

25 BY MR. BILLY GILMORE: Well, Your Honor, for the  
26 record, we were of the impression that we had laid  
27 the proper predicate at the time--

28 BY MR. EVANS: --He has been through this.

29 BY MR. BILLY GILMORE: --at the time that Mr.

1           Veal testified. We didn't realize we would have to  
2           call him back to re-establish the proper predicate  
3           again.

4           **BY THE COURT:** But, of course, I'm not  
5           responsible for what you think. If you-- you have  
6           got to anticipate in that regard that if you were  
7           going to call him to impeach him, that you may not  
8           have laid the predicate. You have got to keep him  
9           around. I gave you the opportunity to keep him  
10          around, and you excused him. So it's not the Court's  
11          fault. That's your fault, and you let him go.

12          **BY MR. BILLY GILMORE:** We only excused him after  
13          we thought we had the proper predicate lain, Your  
14          Honor.

15          **BY THE COURT:** Well, my ruling is you didn't  
16          have the proper predicate, so you shouldn't have  
17          excused him. Okay, let's have this next witness.

18          (THE COURT, ALL COUNSEL, THE DEFENDANT, AND THE  
19          COURT REPORTER RETURNED TO THE COURTROOM AT 1:57  
20          P.M., AND PRIOR TO THE JURY BEING PRESENT PROCEEDINGS  
21          CONTINUED AS FOLLOWS:)

22          **BY THE COURT:** Mr. Gilmore, who are you going to  
23          have next?

24          (Pause; Defense Counsel are conferring with  
25          their client. JURY ENTERS THE COURTROOM.)

26          **BY THE COURT:** Mr. Gilmore, who are you going to  
27          have next?

28          **BY MR. BILLY GILMORE:** Your Honor, we would call  
29          the Defendant.

1                   BY THE COURT: Okay. Wait just a minute. I  
2                   need you.

3                   (CONFERENCE AT THE BENCH OUT OF THE HEARING OF  
4                   THE JURY AS FOLLOWS:)

5                   BY THE COURT: Were y'all going to call Haymore?

6                   BY MR. BILLY GILMORE: We are going to call him,  
7                   Your Honor, as soon as we can get the predicate  
8                   laid. We wanted to call him; yes, sir.

9                   BY THE COURT: Bring him over here.

10                  BY THE COURT REPORTER: Who?

11                  BY THE COURT: Haymore. That doesn't matter  
12                  whether it's in the record or not.

13                                 END BENCH CONFERENCE.

14                  BY THE COURT: All right, sir. Mr. Flowers,  
15                  come around and take the stand.

16                                 CURTIS FLOWERS,  
17                  a black male called to testify in his own behalf being the  
18                  Defendant, having first been duly sworn by the Clerk, testified  
19                  as follows, to-wit:

20                                 BY MR. BILLY GILMORE: May I proceed, Your  
21                  Honor?

22                                 BY THE COURT: Uh-hum.

23                  DIRECT EXAMINATION BY MR. BILLY GILMORE:

24                  Q. State your name, please.

25                  A. Curtis Flowers.

26                  Q. And how old are you, Mr. Flowers?

27                  A. 27.

28                  Q. And I believe you are the Defendant in this case  
29                  today?

1 A. Yes, sir.

2 Q. Okay. And prior-- well, let me back up. July 16,  
3 1996, where did you live?

4 A. 702 A McNutt Drive.

5 Q. Okay, now speak loudly enough where everyone can hear  
6 you.

7 A. 702 McNutt Drive.

8 Q. Is that in Winona?

9 A. Yes, sir.

10 Q. Okay. Now you have been here throughout this trial  
11 this week, have you not?

12 A. Yes, sir.

13 Q. Now tell the Court whether or not you were employed  
14 at Tardy's Furniture store?

15 A. At what time?

16 Q. Any time.

17 A. Yeah, I worked at Tardy's.

18 Q. When did you start there?

19 A. I can't recall. I believe it was the week of the  
20 4th, week before the 4th.

21 Q. Week before the 4th? How many days did you work?

22 A. I worked on and off a week.

23 Q. Now there has been testimony here today about a  
24 battery, battery incident. Tell us about that.

25 A. Well, Mrs. Tardy asked me to go around to Otasco,  
26 pull around back, said Jimmy Sanders had some batteries she  
27 wanted me to bring around to the store.

28 Q. All right, now you are saying Otasco. Is that the  
29 same as Coast to Coast?

1           A.    Yeah, Coast to Coast.

2           Q.    Okay, go ahead.

3           A.    And anyway, I pulled around to the side door, and me  
4 and Jimmy Sanders loaded the batteries, and as I pulled off and  
5 up to the end of the alley and went to pull out into the  
6 street, three of the batteries fell off.

7           Q.    Okay, did they break?

8           A.    Three of them did.

9           Q.    What did you do then?

10          A.    Got out of the truck and loaded the batteries and  
11 went on around to the store.

12          Q.    Did you tell Ms. Tardy about it?

13          A.    Yes, sir.

14          Q.    Okay, what did she instruct you to do?

15          A.    Take the batteries back to Jimmy and she was going to  
16 call and see if he could work out some kind of deal on the  
17 batteries, that if he couldn't, then it was going to have to  
18 come out of my paycheck.

19          Q.    Okay. When you started to work there, was there any  
20 understanding between you and Ms. Tardy or Mr. Tardy concerning  
21 any damages you may do in loading, moving, or unloading  
22 furniture?

23          A.    Yes, he said that whoever was in charge of the  
24 furniture, you know, like driving the truck was, you know,  
25 responsible for everything on the truck. Said that means so if  
26 I loaded the furniture, it was my job to make sure it was  
27 properly tied down and all that.

28          Q.    You had that understanding to start with?

29          A.    Yes, sir.

1 Q. Do you know whether or not there was any warranty or  
2 any guaranty or any concessions on the batteries that were  
3 damaged?

4 A. No, sir. I do not.

5 Q. Were the batteries replaced or do you know?

6 A. I don't, I don't know. I don't think they were.

7 Q. Did you unload all the batteries back around at the  
8 same place you picked them up?

9 A. Yes, sir.

10 Q. Even the ones that didn't fall off?

11 A. Yes, sir.

12 Q. Now while we are talking about the subject of  
13 employment, do you remember what day you went to work, the day  
14 of the week, not the date, but the day of the week?

15 A. It was on a Saturday.

16 Q. Okay, and how many days did you work?

17 A. I believe a week.

18 Q. Okay. All right, now you said this was the weekend  
19 before the 4th?

20 A. Yes, sir.

21 Q. Do you remember what day the 4th was on?

22 A. I think it was on a Thursday.

23 Q. Okay, did you work up to the 4th?

24 A. I worked up to the 3rd of July.

25 Q. Okay. Do you know whether you got off at noon or at  
26 5:00 on Wednesday before the 4th?

27 A. It was noon.

28 Q. Now had you received any pay up to that point for  
29 your work?

1 A. No, but Ms. Tardy gave me \$30.00 in advance.

2 Q. Okay.

3 A. Said it was just a little something for the 4th.

4 Q. Okay. Did she, did she ask you if you needed  
5 anything, or did you go ask her about an advance?

6 A. Well, she had brought it to my-- she was paying the  
7 guy that helped me.

8 Q. Who was this?

9 A. Mike Martin.

10 Q. All right, he had helped you that day?

11 A. Yeah. He took some mattresses to Carrollton.

12 Q. And she was paying him?

13 A. Yes, sir.

14 Q. Were you there?

15 A. Yes, sir.

16 Q. And what did she say?

17 A. And she told me that she hated it wasn't pay day for  
18 me and said I know, she know I would like to have something for  
19 the 4th in my pocket. And I said, "Yes, ma'am; I sure would."  
20 And she asked was it anything she could do for me. I asked her  
21 could I have \$30.00.

22 Q. Did she give it to you?

23 A. Yes, sir.

24 Q. Now the Thursday was the 4th of July holiday?

25 A. Yes, sir.

26 Q. Okay. So you wasn't required to go into work that  
27 day?

28 A. No, sir.

29 Q. Okay, now on Friday were you supposed to go to work?

1 A. Yes, sir.

2 Q. And did you go to work?

3 A. No, sir.

4 Q. All right, what did you do about going to work that  
5 day?

6 A. Well, I called in, and I told her that I wouldn't be  
7 able to make it in that day.

8 Q. Did you tell her why?

9 A. Well, she didn't ask. She just asked me was I coming  
10 in Saturday. I told her yes, sir. I told her yes, ma'am; I  
11 would.

12 Q. Okay. Well, did you go in on Saturday?

13 A. No, sir.

14 Q. Okay. While you were off for the 4th holiday, did  
15 you seek other employment?

16 A. I had went to IBP and put in an application.

17 Q. All right, what is IBP?

18 A. It's where they make brake shoes.

19 Q. Had you made that application before you went to work  
20 for Tardy's?

21 A. Yes.' I had made that application around the 20th of  
22 June.

23 Q. Okay, and while you were off for the July 4th  
24 holiday, did you talk to the manager of the factory?

25 A. Yeah. I had went down there like that Friday.

26 Q. Okay, and what is his name if you know?

27 A. I can't recall.

28 Q. Okay, but was it the manager?

29 A. Yes. He was the guy in charge. He owns the company.



1 Q. He owned the company?

2 A. Yes, sir.

3 Q. Okay. And did you discuss going to work for that  
4 factory?

5 A. Yes, sir.

6 Q. You said IBP?

7 A. IBP.

8 Q. And that is International Brake Products or  
9 something?

10 A. Brake Pads or something, something like that.

11 Q. All right. Let me ask you this. Before you went to  
12 work for the Tardy's Furniture, where had you been employed?

13 A. At Richardson Brothers.

14 Q. And what type job did you do there?

15 A. Well, we make furniture. I was a machine operator.

16 Q. All right, what was your particular job?

17 A. Well, I put like grooves in headboards and bed posts,  
18 stuff like that.

19 Q. What department did you work in?

20 A. The finish mill.

21 Q. Did you ever work in the receiving department?

22 A. Yes, sir.

23 Q. And what was your duties working in the receiving  
24 department at Richardson's?

25 A. Loading and unloading trucks.

26 Q. Okay, how did you do this?

27 A. Well, we would load trucks with dollies, fork lifts,  
28 and my job was once we got a truck loaded, to fill out the bill  
29 of lading and all that and hook up to the trailer and park it

1 out in the parking lot.

2 Q. So you can operate a fork lift?

3 A. Yes, sir.

4 Q. Now the job you applied for up at the brake company,  
5 was it a same or similar type job?

6 A. Yeah, driving fork lifts.

7 Q. Okay, was there other jobs open at that time at that  
8 place?

9 A. Maintenance.

10 Q. And so which job did you apply for?

11 A. For the fork lift.

12 Q. Okay. Now getting back to after the holiday or  
13 during the holiday, did you talk to the owner of the brake  
14 company?

15 A. Yes, sir. I did.

16 Q. All right, did he indicate he could use you there?

17 A. Yes, sir. He said that as of right then--

18 BY MR. EVANS: --I object to hearsay.

19 BY THE COURT: Sustained.

20 BY MR. BILLY GILMORE:

21 Q. At that time was a job available for you up at the  
22 brake company?

23 A. Yes, sir.

24 Q. All right, during the holiday, did you discuss this  
25 employment with anybody?

26 A. Yeah, Keith Daniels, my sister's boyfriend.

27 Q. Who?

28 A. Keith Daniels, my sister's boyfriend.

29 Q. Okay, Keith Daniels?

1 A. Yes, sir.

2 Q. All right. So did, in fact, did you go up to the  
3 brake company the following week?

4 A. Yes, sir.

5 Q. And do you remember what day you went up there?

6 A. I think it was, it was that Monday or Tuesday.

7 Q. Okay. When you got there, what did you find out?

8 A. That Keith had got the job.

9 Q. Keith had got there ahead of you?

10 A. Yeah.

11 Q. He got the job?

12 A. Yeah, he told me that he had more years experience  
13 than I did, and he qualified for the work.

14 Q. All right, who told you that?

15 A. The guy that owned the company.

16 Q. Okay. So he got the job?

17 BY MR. EVANS: Your Honor, I am trying not to  
18 object, but there is absolutely no relevance in what  
19 we are covering at this point, and I'm going to have  
20 to object. It's just a waste of time.

21 BY MR. BILLY GILMORE: I will tie it up, Your  
22 Honor.

23 BY THE COURT: Sir?

24 BY MR. BILLY GILMORE: I will tie it in.

25 BY THE COURT: Well, make haste.

26 BY MR. BILLY GILMORE: Okay.

27 BY MR. BILLY GILMORE:

28 Q. What reason did you not go to work on Monday at  
29 Tardy's?

1           A.    Well, I had called-- well, I went for the job at IBP  
2   that Monday. But Keith Daniels had got the job.

3           Q.    Okay, so that's the reason you didn't go in to  
4   Tardy's?

5           A.    That's correct.

6           Q.    All right, did you make any calls to Tardy's after  
7   that Monday?

8           A.    That Tuesday, Tuesday morning.

9           Q.    All right. What time Tuesday morning?

10          A.    It was about, I will say about 9:30.

11          Q.    And who did you talk to?

12          A.    With Mrs. Tardy.

13          Q.    Okay. And what did you ask her?

14          A.    I asked her if it was okay for me to come back to  
15   work. She said that she had got a couple more guys that kind  
16   of filled in my position, and she just couldn't use me right  
17   now.

18          Q.    Okay, did she ever use the term that "You are fired"?

19          A.    No, she did not.

20          Q.    But she had replaced you meanwhile?

21          A.    Yes, sir.

22          Q.    Now did you inquire as to whether or not you had any  
23   money coming when you talked to Ms. Tardy?

24          A.    No, sir. I didn't.

25          Q.    At any time did she make any comment about whether or  
26   not you had a paycheck coming or?

27          A.    She just said that the check that she had for me was  
28   pretty much used up for those batteries.

29          Q.    Okay, and what did you say?

1           A.    And I said, "Okay. Thank you." And she said, "No,  
2 thank you." I said, "Okay. By-by."

3           Q.    All right. At that point or any time after that, did  
4 you get mad at Ms. Bertha Tardy?

5           A.    No, sir.

6           Q.    Did you understand that if you damage something, that  
7 you were liable for it?

8           A.    Yes, sir, because she explained that to me from day  
9 one, you know.

10          Q.    Now I want to call your attention to the morning of  
11 July 16th, 1996. Do you remember where you were in the early  
12 hours of that morning?

13          A.    At the house.

14          Q.    Okay, now where was this?

15          A.    At 702 McNutt Drive.

16          Q.    Okay, now you lived there with anyone else?

17          A.    With Connie and Lemarcus and Brittany.

18          Q.    Okay, now Connie is your girlfriend?

19          A.    Yes, sir.

20          Q.    And those other two are her children?

21          A.    Yes, sir.

22          Q.    How long had you been living at that address?

23          A.    About 3 years.

24          Q.    Okay. Now I want to call your attention to that  
25 morning. Do you remember Connie getting up to go to work?

26          A.    I remember her getting up, getting ready, but I don't  
27 remember her leaving going to work.

28          Q.    Okay, where were you at the time?

29          A.    In the bed.

1 Q. Okay. Now did you have a job to go to that morning?

2 A. No, sir.

3 Q. Now prior to going to work at Tardy's Furniture  
4 Company and leaving Richardson's Furniture Company, did you  
5 have any employment?

6 A. Would you ask me that again--

7 Q. --Did you work anywhere?

8 A. Would you ask me that again?

9 Q. From the time you left Richardson's Furniture Company  
10 until you went to work at Tardy Furniture, did you work  
11 anywhere?

12 A. Yeah, I worked at Marshall Brothers.

13 Q. Now where is that?

14 A. That's in Grenada.

15 Q. What type work was that?

16 A. Well, we handle metal, scrap iron, and stuff like  
17 that.

18 Q. Okay. All right, immediately prior to going to work  
19 at Tardy Furniture Company, had you had a job for several  
20 weeks?

21 A. It had been, it had been a month, a couple of months.

22 Q. Been a month?

23 A. Yeah.

24 Q. Okay. Were you drawing any kind of unemployment  
25 benefits?

26 A. Yes, sir; I was.

27 Q. How long had you been drawing?

28 A. Well, I had just started drawing unemployment.

29 Q. Okay. Do you remember how many weeks you had drawn?

1 A. Well, I had drawn two weeks before I went to Tardy's.

2 Q. All right, did you draw a check after you went to  
3 work for Tardy's?

4 A. Yes, sir.

5 Q. Okay. Now do you fill out a little form to send in  
6 to the employment insurance outfit?

7 A. Yes, sir. It's attached to your check. Once you  
8 tear your check off, you know, you have a little form to fill  
9 out and mail back in.

10 Q. All right, so did you fill that form out and mail it  
11 back in?

12 A. Yes, sir.

13 Q. All right, did you draw any more unemployment after  
14 that?

15 A. No, sir.

16 Q. Now getting back to July 16th, 1996; all right, you  
17 said Connie left for work?

18 A. Yes, sir.

19 Q. Okay, what did you do next?

20 A. Well, I got up about, between 9:00, 9:15 and went  
21 into the kitchen, and well, I fixed the kids some cereal. And  
22 I started to cook for myself. I had got a can of Hungry Jack  
23 biscuits and an egg and some bacon, and I went to take the lid  
24 off of a Rich-tex shortening can and cut myself in the palm of  
25 the hand. And I went over to my sister's house about, I will  
26 say 10, 9:00, a little after, a little after 9:00.

27 Q. All right. Now which sister are you talking about?

28 A. Priscilla Ward.

29 Q. Okay, and was she there when you got there?

1 A. No, she wasn't.

2 Q. Was anybody there?

3 A. Yeah, Latoya and BoBo.

4 Q. All right, who is BoBo?

5 A. Uh, well, all I ever known him by is BoBo.

6 Q. Is that the same guy that testified this morning  
7 named James Glover?

8 A. Yeah, that's him. Yes, sir.

9 Q. Okay, was that Latoya Harding?

10 A. Yeah, my cousin.

11 Q. Now were they there when you got there?

12 A. Yes, sir.

13 Q. Did you go in the house?

14 A. Yes, sir.

15 Q. Okay. And do you know how long you stayed over  
16 there?

17 A. It was about, about 15 minutes.

18 Q. Okay. When you left there-- well, let me back up.  
19 What did you go over there for?

20 A. A bandage. My sister had a first aid kit in the  
21 bathroom.

22 Q. Okay, and you stayed there about 15 minutes?

23 A. About 15 minutes.

24 Q. Okay, when you left there, where did you go?

25 A. On my way out I talked with Mr. Glover.

26 Q. BoBo?

27 A. Yeah. We talked about a fishing spot that me and  
28 James had went to earlier, a few days ago, and we talked about  
29 going, and I told him to get with James and let me know, and



1 that evening they come by and picked me up, and we went to that  
2 fishing spot.

3 Q. All right, now who is James?

4 A. James Ward; he is my brother-in-law.

5 Q. Brother-in-law; your sister's husband?

6 A. Yes, sir.

7 Q. Okay, after you left there, where did you go next?

8 A. After I left my sister's house?

9 Q. Yes.

10 A. Went back to the house and then to Jeff's store--

11 Q. --All right, now that is your and Connie's house you  
12 went to?

13 A. Yes, sir.

14 Q. All right, tell the Court how you would get from your  
15 sister's house or your house back or forth either way. Would  
16 you go around the street or cut across, or how would you get  
17 there?

18 A. Cut across between the houses. There is a path.

19 Q. Okay. Now what were the children doing when you left  
20 going over to your sister's house?

21 A. What were they doing?

22 Q. Yes?

23 A. At the house.

24 Q. What were they doing at the house?

25 A. Brittany was eating cereal. Lemarcus was playing the  
26 Nintendo.

27 Q. All right. When you got back, did you finish cooking  
28 the breakfast?

29 A. Yes, sir.

1 Q. What were you cooking that morning?

2 A. Biscuit, egg and bacon.

3 Q. Okay. And I believe you said you cut your hand  
4 opening a shortening--

5 A. --my palm on the shortening can, the lid.

6 Q. Okay. So did you finish fixing breakfast?

7 A. Yes, sir.

8 Q. Did the children eat any of the breakfast you cooked,  
9 or were they full on the cereal?

10 A. Well, Brittany, she ate some bacon.

11 Q. What about Lemarcus?

12 A. No, he had already eaten cereal.

13 Q. All right, did you eat breakfast?

14 A. Yes, sir.

15 Q. Now did you leave the house any more after you  
16 finished eating?

17 A. Yes, sir.

18 Q. And about what time was that?

19 A. Well, I went to Kelly's Stop and Go around, around  
20 11:00, somewhere in there.

21 Q. And why did you go to Kelly's Stop and Go?

22 A. I went and purchased a pack of cigarettes and a bag  
23 of chips and a six pack of beer.

24 Q. Okay. Now what is Kelly's Stop and Go? What type  
25 store is that?

26 A. It's like a grocery store, gas station.

27 Q. Okay. And do you know anybody that works in there?

28 A. My father.

29 Q. Your father works there?

1 A. Yes, sir.

2 Q. That is Archie Flowers?

3 A. Yes, sir.

4 Q. Who else works in there?

5 A. Troy Yates.

6 Q. Okay, does he own the place?

7 A. Well, he was leasing at that time.

8 Q. He is not there any more?

9 A. No, sir.

10 Q. Was he there the day you went there?

11 A. No. I believe my father said he was gone to pick up  
12 a guy named ThumThum or something to do a little work around  
13 the store.

14 Q. All right, how long did you stay at the store?

15 A. Oh, about, about ten or twelve minutes because I  
16 always carry on with my daddy.

17 Q. Now Mr. Flowers, when did you first become aware that  
18 there had been an incident down at Tardy's Furniture?

19 A. My father.

20 Q. Beg your pardon?

21 A. My father. He told me.

22 Q. Was that while you were at Kelly's Stop and Go?

23 A. No, I went to the store to buy something. When I was  
24 there, he had brought it up, and he told me that a guy had told  
25 him about it. That was my first time ever hearing about it.

26 Q. So that's the first you became aware of it when you  
27 went to the store where your father was. He told you?

28 A. Yes, sir.

29 Q. Okay. What did you do next?

1           A.    I went back to the house.

2           Q.    Okay, now where were the children when you left to go  
3 to the store?

4           A.    Starting towards their mother's house-- grandmother's  
5 house.

6           Q.    Did you see them going towards their grandmother's  
7 house when you left?

8           A.    Yes, sir.

9           Q.    Okay. And did you see the children when you came  
10 back?

11          A.    Yes, sir.

12          Q.    Where were they?

13          A.    On top of the hill.

14          Q.    All right. Now if you would, describe to the Court  
15 the location of the various houses and where your house was  
16 related to their grandmother's house?

17          A.    It was like behind where me and Connie was living,  
18 there is a big open area where all the kids play during the  
19 day, and you would have to cross that playground behind the  
20 apartment. And right at the other side of where they play is  
21 their grandmother's house.

22          Q.    Now I understand that this is what they call The  
23 Project; is that right?

24          A.    Yes, sir.

25          Q.    Now where you live, is it kind of like a circle?  
26 Circle drive?

27          A.    Yes, sir.

28          Q.    All right, is it houses on the inside of the circle  
29 and also on the outside of that circle?

- 1           A.    Yes, sir.
- 2           Q.    So there is an opening in the back of all the houses  
3 on the inside of the circle?
- 4           A.    Yes, sir.
- 5           Q.    And the children play there?
- 6           A.    Yes, sir.
- 7           Q.    Okay. So do you know whether or not the children  
8 ever got over to their grandmother's house?
- 9           A.    No, sir. I can't say that I do.
- 10          Q.    Okay, how long would it take you to walk up to  
11 Kelly's Stop and Go and come back?
- 12          A.    Oh, about ten minutes, ten or twelve minutes.
- 13          Q.    Is that each way or both ways?
- 14          A.    That is the way I go.
- 15          Q.    Well, I mean you take ten minutes to go there and ten  
16 minutes to come back or what?
- 17          A.    Yes, sir. Yeah, ten minutes to go and ten minutes to  
18 come back.
- 19          Q.    Okay. How far in distance is it from your house to  
20 Kelly's Stop and Go?
- 21          A.    Oh, I would say about, about a quarter of a mile.
- 22          Q.    Okay. Is that taking short cuts or going around by  
23 the street?
- 24          A.    That is taking short cuts.
- 25          Q.    Okay, is it a common path from where you live toward  
26 town?
- 27          A.    A pass?
- 28          Q.    Path, walking path?
- 29          A.    Towards town?

1 Q. Yes. Toward the way you were going?

2 A. I couldn't say.

3 Q. What do you have to cross to get from your house to  
4 Kelly's Stop and Go?

5 A. Well, I crossed through behind the houses and crossed  
6 the school campus.

7 Q. Is there an old school campus there?

8 A. Yes, sir.

9 Q. Is the school there any more?

10 A. The school is still there but it, you know.

11 Q. They don't have school?

12 A. It's not in business.

13 Q. Okay. So did you cut across the campus?

14 A. Yes, sir.

15 Q. Okay, and then from there where did you go?

16 A. On to Cage Street which is the street my mother lives  
17 on and down Silver to the store.

18 Q. On Silver Street?

19 A. Yes, sir.

20 Q. Okay. Now if you would, tell us more exactly where  
21 Kelly's Stop and Go is located there in Winona. What street is  
22 it located on?

23 A. On Silver Street.

24 Q. All right, is it on the corner or middle of the  
25 block?

26 A. It's on the corner.

27 Q. All right, what is the other street that runs the  
28 other direction?

29 A. 51.

1 Q. Okay, is that also known as Applegate Street too?

2 A. I'm not sure.

3 Q. But it's old Highway 51?

4 A. Yeah, old Highway 51.

5 Q. Okay. Now did anybody come to your house after you  
6 returned from Mr. Kelly's Stop and Go?

7 A. Yeah, my cousin.

8 Q. What is his name?

9 A. Kittery Jones.

10 Q. Kittery Jones?

11 A. Yes, sir.

12 Q. What time did he get there?

13 A. I would say around 11:30, between 11:30 and 12:00.

14 Q. And what was his reason for coming to your house that  
15 time of day?

16 A. He said that he had heard about an incident down at  
17 Tardy's, and he thought that I was one of them that got hurt,  
18 and he just come by to check on me.

19 Q. So he thought you were one of the victims down at  
20 Tardy's Furniture?

21 A. Yes, sir.

22 Q. But you already had found out about the incident by  
23 then?

24 A. Yes, sir.

25 Q. Now Mr. Flowers, do you have an automobile?

26 A. Yes, sir. I had one.

27 Q. What kind did you have?

28 A. I had a '96 Nissan pickup.

29 Q. And you said you had. When was the last time you

1 rode in that truck?

2 A. In April.

3 Q. April of what year?

4 A. Of '95-- '96.

5 Q. '96?

6 A. Yeah.

7 Q. And why were you not riding in it after that?

8 A. Because it was tore up.

9 Q. Tore up?

10 A. Yes, sir.

11 Q. Has that vehicle been sold or junked out since then?

12 A. Yes, sir, traded.

13 Q. Traded, okay. Now did your wife have a car?

14 A. No, sir.

15 Q. I mean your girlfriend?

16 A. No, sir.

17 Q. On occasions when you would have to go somewhere,  
18 were you able to borrow a car from friends or relatives?

19 A. Well, my sister's sometimes.

20 BY MR. EVANS: Your Honor, unless he can show  
21 some relevance to all this, I'm going to have to  
22 object. It is going into something that has  
23 absolutely nothing to do with this case.

24 BY MR. BILLY GILMORE: Well, Your Honor, the  
25 witness say they have seen him walking around town.  
26 I am just establishing--

27 BY MR. EVANS: --And he is admitting he didn't  
28 have a car, so this is a waste of time.

29 BY THE COURT: Well, make it time specific, Mr.



1 Gilmore.

2 BY MR. BILLY GILMORE:

3 Q. Okay. Now Mr. Flowers, did you have occasion to walk  
4 uptown any time before or after the 16th of July, '96?

5 A. No, sir.

6 Q. Well, how did you get to work when you went to work  
7 at Tardy's?

8 A. Those mornings I didn't get my mother to take me I  
9 walked.

10 Q. Okay. Was there anything different about you walking  
11 to various places in Winona?

12 BY THE COURT: I'm going to sustain the  
13 objection. This is not relevant.

14 BY MR. BILLY GILMORE: Okay.

15 BY MR. BILLY GILMORE:

16 Q. Now Mr. Flowers, have you owned or worn any Fila  
17 tennis shoes in the last several years?

18 A. No, sir.

19 Q. When is the last time that-- strike that. Have you  
20 ever worn or owned any Fila tennis shoes?

21 A. Yes, sir.

22 Q. When?

23 A. Ooh, I was in school.

24 Q. Do you remember about how old you were?

25 A. About (Pause).

26 Q. Well, was it your senior year, junior year, or do you  
27 remember?

28 A. I was about tenth or eleventh grade.

29 Q. Tenth or eleventh grade?

1 A. Uh-hum.

2 Q. All right, do you remember what size shoe you wore  
3 back then?

4 A. About 8 and a half.

5 Q. And what size do you wear now?

6 A. 11. I wear 11 in dress shoe and 11 and a half in gym  
7 shoe.

8 Q. Okay. So you haven't had a pair of Fila shoes of any  
9 kind in the last several years?

10 A. No, sir.

11 Q. Are you aware of Connie buying Marcus a pair of Fila  
12 shoes?

13 A. I know that she bought him some, but I'm not sure  
14 what kind.

15 Q. Did you ever see those shoes?

16 A. I can't say that I did because I never pay them, you  
17 know, no attention, you know, when they run around the house.

18 Q. And I believe he went to live with his father in  
19 January of '96?

20 A. Yes, sir.

21 Q. Okay. Now, all right, after Mr. Jones left your  
22 house, you said he was there between 11:30 and 12:00?

23 A. Yes, sir.

24 Q. Did anybody else come to your house?

25 A. Well, the State Highway Patrolman and Kenneth  
26 Townsend, they come about 1:30.

27 Q. Okay, and what happened?

28 A. They said that they wanted to see me downtown for  
29 questioning.

1 Q. Okay, did you go downtown or did you go with them or  
2 what?

3 A. Yes, sir.

4 Q. Okay. And it was about 1:30?

5 A. Yes, sir.

6 Q. And when you got downtown, who was there to talk to  
7 you?

8 A. Mr. John Johnson, Mr. Matthews, and Mr. Miller.

9 Q. Okay. And is that the same people that have already  
10 testified here?

11 A. Yes, sir.

12 Q. In this week?

13 A. Yes, sir.

14 Q. Okay. Did they ask you your whereabouts that  
15 morning?

16 A. Yes, sir.

17 Q. And did you basically tell them about the same thing  
18 you have told here today?

19 A. Yes, sir.

20 Q. Did they ask you about Fila tennis shoes?

21 A. Yes, sir.

22 Q. Did you tell them you had any?

23 A. No, sir. I told them-- he asked me did I own any,  
24 and I told him no, sir.

25 Q. Okay, did they ask you basically the same questions  
26 then that I have asked you today?

27 A. Yes, sir.

28 Q. Do you own any type weapons, Mr. Flowers?

29 A. No, sir.

1 Q. More specifically, do you own a .380 semi-automatic  
2 pistol?

3 A. No, sir.

4 Q. Have you ever owned one?

5 A. No, sir.

6 Q. Do you know Doyle Simpson?

7 A. Yes, sir.

8 Q. Do you know whether or not he owned one?

9 A. I have seen him with one; yes, sir.

10 Q. Do you know what kind of car Doyle Simpson drives?

11 A. Yes, sir.

12 Q. What kind?

13 A. It's a brown two tone Pontiac.

14 Q. Is it a large car or small car?

15 A. Small car.

16 Q. Is he related to you?

17 A. Well, they say my uncle.

18 Q. They say he is your uncle?

19 A. Yes, sir.

20 Q. Do you remember what type clothes you were wearing on  
21 July 16th, 1996?

22 A. Yes, sir.

23 Q. Describe what you were wearing.

24 A. I had a pair of cut off blue Tommy Hilfiger shorts  
25 and a white Tommy Hilfiger shirt.

26 Q. All right, now you are pointing to your chest?

27 A. With a, it had a little white Tommy Hilfiger sign  
28 right here.

29 Q. Okay, and what color was the shirt?

1 A. White.

2 Q. White, and what color was the figure on there?

3 A. Uh, it was red and, I think red and blue.

4 Q. Okay. Is that a slip on type shirt or is it a button  
5 up shirt?

6 A. It's a slip on.

7 Q. And what type shoes did you have on?

8 A. A pair of blue and white Nikes.

9 Q. At some time during that week, did police officers  
10 get those shoes?

11 A. Yes, sir.

12 Q. When did they get them?

13 A. I think it was the 17th.

14 Q. Okay. Did they examine those shoes when you went to  
15 the police station that day, the 16th?

16 A. Yes, sir.

17 Q. Did they take them off your feet and examine them?

18 A. Yeah, Mr. Miller, he did.

19 Q. Okay. Did you agree to talk to them when you went up  
20 there?

21 A. Yes, sir. I didn't have nothing to hide.

22 Q. Did you cooperate with them fully?

23 A. Yes, sir.

24 Q. And they asked you to do, I believe some other type  
25 test. Did you submit to another type test?

26 A. Yes, sir. I took a lie detector test. I took a  
27 thing for gunshot residue. I took it twice.

28 Q. All right. What do you mean you took a gunshot  
29 residue twice?

1           A.   Well, Mr. Miller had did it at first, and Mr.  
2           Matthews come back and was reading the directions. He said he  
3           didn't know whether he used the left hand on the right hand or  
4           the right hand on the left hand.

5           Q.   Mr. Miller said that?

6           A.   Yes. Yes, sir. So he threw that away, and Mr.  
7           Matthews did it again.

8           Q.   All right. Let me back up just a minute now. Was  
9           all three of these men there when you first got there?

10          A.   Yes, sir.

11          Q.   Did they introduce themselves to you?

12          A.   Yes, sir. Me and Mr. Johnson, Mr. John Johnson, we  
13          shook hands, and he introduced me to Mr. Matthews and Mr.  
14          Miller, and I shook their hand, and they asked me to have a  
15          seat.

16          Q.   Okay, all right. But then Mr. Miller attempted to do  
17          a gun residue kit on you and messed it up?

18          A.   Yes, sir.

19          Q.   All right. Then did Mr. Matthews do one?

20          A.   Yes, sir.

21          Q.   Now did either one of these men wash their hands or  
22          put on any type gloves or anything before they administered the  
23          test--

24                   BY MR. EVANS:  --object to leading, Your Honor.

25           BY THE WITNESS:

26          A.   No, sir--

27                   BY THE COURT:  --Sustained.

28           BY MR. BILLY GILMORE:

29          Q.   What did Mr. Miller do prior to administering the

1 test to you?

2 A. Ask that again now.

3 Q. What did Mr. Miller do in preparations for doing the  
4 gunshot residue kit on you?

5 A. He just, just brought it in and proceeded to do it,  
6 you know.

7 Q. Okay, did he wash his hands?

8 A. No, sir. He never left the room.

9 Q. Did he put on gloves?

10 A. No, sir.

11 Q. Okay, what happened to that test kit?

12 A. He threw it away. And Mr. Matthews redid it.

13 Q. And did Mr. Matthews wash his hands?

14 A. No, sir.

15 Q. Did he put on gloves?

16 A. No, sir.

17 Q. Did he administer the test?

18 A. Yes, sir.

19 Q. Tell the Court whether or not you had been handling  
20 any car batteries within a few days prior to this incident?

21 A. Yes, sir. I had because I had been working on my  
22 truck too.

23 Q. Okay, all right. Had you handled any spark plugs or  
24 spark plug wires?

25 A. Yes, sir.

26 Q. Had you been shooting any fireworks?

27 A. Yes, sir.

28 Q. When had you shot fireworks?

29 A. Well, during the 4th and the day before they picked

1 me up for questioning.

2 Q. Would that have been on the 15th?

3 A. Yes, sir.

4 Q. I believe that would have been on a Monday?

5 A. Yes, sir. That was the evening me, Kawill and Keith  
6 Daniels and little nephews, his little nephews and my little  
7 cousin, we was out there shooting fireworks.

8 Q. On the 15th?

9 A. Yes, sir.

10 Q. All right, what type fireworks were you shooting?

11 A. Bottle rockets.

12 Q. And were y'all playing any type game with them?

13 A. Yes, sir. We war with them.

14 Q. You war with them. What do you mean by that?

15 A. We light them and aim at each other, you know, and  
16 run and shoot bottle rockets at each other. That's all.

17 Q. Does it burn your hands when you do that?

18 A. Sometimes.

19 Q. When was the last time you shot any type gun?

20 A. It was back in the fall of the year.

21 Q. All right, what type gun were you shooting?

22 A. Uh, .22 automatic.

23 Q. Okay, you talking about a rifle or--

24 A. Yes, sir.

25 Q. And what were you doing with it?

26 A. We were squirrel hunting.

27 Q. Squirrel hunting?

28 A. Yes, sir.

29 Q. Had you shot a pistol within any time immediately



1 prior to July 16th, 1996?

2 A. No, sir.

3 Q. I believe you said you never had owned a pistol?

4 A. No, sir.

5 Q. Now Mr. Flowers, you have been seated here in the  
6 courtroom when various witnesses testified, have you not?

7 A. Yes, sir.

8 Q. Now you heard Katherine Snow, I believe, or  
9 Katherine, I believe she called herself, Snow testified?

10 A. Yeah.

11 Q. That she saw you leaning on Doyle Simpson's car?

12 A. Yes, sir. I heard her.

13 Q. And that would have been on July the 16th or  
14 somewhere, 7:00 or 7:30 area. Were you there?

15 A. No, sir.

16 Q. And you also heard Mr. Kennedy testify that you  
17 passed his house somewhere around 7:20?

18 A. Yes, sir. I heard that.

19 Q. And did you hear him say that you were wearing a  
20 black sweater and long white pants?

21 A. Yes, sir. I heard him say that.

22 Q. Do you have any long white pants?

23 A. No, sir.

24 Q. At that time did you have any long white pants?

25 A. No, sir.

26 Q. Did you have a black sweater?

27 A. No, sir.

28 Q. Now you have heard Mary Frances-- Mary Jeanette, I  
29 believe, Fleming testify that she met you somewhere on

1 Carrollton Street. Did you meet her on Carrollton Street on  
2 that particular day?

3 A. No, sir.

4 Q. Have you met her on other occasions when y'all would  
5 be walking?

6 A. I have saw her a morning on my way to work one  
7 morning.

8 Q. Okay, does she live in the vicinity of where you live  
9 or your mother lives?

10 A. No, sir.

11 Q. Okay. Does she live in between where you live and  
12 the downtown area where Tardy Furniture Company?

13 A. Yes, sir.

14 Q. Okay. Now you heard her testify that she met you  
15 that morning, had on long black pants?

16 A. Yes, sir. I heard her.

17 Q. Do you own long black pants?

18 A. No, sir.

19 Q. And I believe she also said you had on some type of  
20 baseball jacket. Do you wear baseball jackets?

21 A. No, sir. Not that time of year nowhere.

22 Q. What do you mean?

23 A. Not in the summer.

24 Q. Do you own a purplish looking baseball jacket?

25 A. No, sir.

26 Q. Did you own one on July the 16th, 1996?

27 A. No, sir.

28 Q. Now you also heard Clemmie Fleming say she saw you  
29 running that day?

1 A. Yes, sir.

2 Q. Were you on Carrollton or Church Street on that  
3 particular day around 10 o'clock?

4 A. No, sir. I wasn't.

5 Q. Now Mr. Fleming, you have heard-- I mean Mr. Flowers,  
6 I'm sorry, Mr. Veal testify that you made some type of  
7 confession while you were there in the Leflore County Jail.

8 A. Yes, sir; I heard him.

9 Q. Did you tell him you did any of this you are accused  
10 of?

11 A. No, sir.

12 Q. While you were there, was there any discussion  
13 brought up about what you were charged with?

14 A. Yes, sir.

15 Q. Did you have the benefit of newspapers and television  
16 there at the jail?

17 A. Yes, sir. We did.

18 Q. Were there other inmates in there aware of what you  
19 were charged with?

20 A. Yes, sir.

21 Q. Had Mr. Veal made any comments about what you were  
22 charged with?

23 A. No, sir.

24 Q. Mr. Hawkins; do you recall him being there?

25 A. Yes, sir.

26 Q. You have heard him testify?

27 A. Yes, sir.

28 Q. Okay. Did you make any kind of statements to him  
29 that you did what you were accused of?

1 A. No, sir.

2 Q. Now backing up to Mr. Veal, did he get out  
3 immediately after he made this accusation toward you?

4 A. Yes, sir. He did.

5 Q. What about Mr. Hawkins?

6 A. Yes, sir.

7 Q. He got out of jail?

8 A. Yes, sir.

9 Q. Mr. Flowers, did you have any type ill will towards  
10 Ms. Tardy or anybody else at Tardy's Furniture because of your  
11 employment there or lack of employment there?

12 A. No, sir. I didn't.

13 BY MR. BILLY GILMORE: Court indulge me a  
14 moment.

15 (Defense Counsel confer.)

16 BY MR. BILLY GILMORE:

17 Q. Mr. Flowers, I believe either Mr. Veal or Mr. Hawkins  
18 one said something about Mr. Golden, one of the victims, was  
19 your cousin. Did you know Robert Golden?

20 A. Yes, sir. I knew him.

21 Q. Is he kin to you?

22 A. No, sir.

23 Q. How long have you known Robert Golden?

24 A. Ooh, quite a while.

25 Q. Okay. Now after July 16th, 1996, how many times were  
26 you picked up or police came to your house to talk to you about  
27 this case?

28 A. Well, that, the week of the murder I think they  
29 picked me up every day.

1 Q. Okay. Did you cooperate with them fully?

2 A. Yes, sir.

3 Q. Did they ask you to deliver to them various articles  
4 of clothing and shoes?

5 A. Yes, sir.

6 Q. Did you cooperate?

7 A. Yes, sir.

8 Q. All right, did they talk to you any more after that  
9 week?

10 A. Yes, sir.

11 Q. And when was that?

12 A. Well, I think the first part of the next week - I  
13 think it was that Monday - the Sheriff come by, Mr. Robert  
14 Tompkins. He wanted me to, he wanted to wire me up to get me  
15 to see if Doyle will say something to me about that murder.

16 Q. Did you agree to it?

17 A. No, sir.

18 Q. Do you know whether or not when you were picked up  
19 on July the 16th, was Doyle Simpson also at the police  
20 department?

21 A. Yeah, he was standing outside.

22 Q. Do you know whether or not he was a suspect?

23 BY MR. EVANS: Your Honor, this witness has no  
24 way of knowing who a suspect was.

25 BY THE WITNESS:

26 A. --I don't think he was.

27 BY THE COURT: Sustained.

28 BY MR. BILLY GILMORE:

29 Q. Do you know if the police interviewed him while you

1       were up there?

2           A.    Well, I don't-- not while I was there because when I  
3       left, he was gone.

4           Q.    Okay, so he left before you did?

5           A.    Yes, sir.

6           Q.    He was there when you got there?

7           A.    Yes, sir, standing in the parking lot. Well, he-- I  
8       got there before he did.

9           Q.    You got there--

10          A.    --yes. When I got there, they told me that they  
11       would be with me in a minute. And I told them that I would be  
12       standing outside smoking a cigarette, and by that time Simpson  
13       pulled up, him and another guy, which when they called me in to  
14       talk to me, when I come out, he was gone.

15          Q.    Who was the guy with Simpson?

16          A.    I think it was the guy driving a wrecker or  
17       something.

18          Q.    Now when did you leave the State of Mississippi and  
19       go to Texas?

20          A.    The end of September.

21          Q.    Okay, and why did you go to Texas?

22          A.    Because my brother-in-law was telling me about all  
23       the jobs and opportunities that was out there, and I went one  
24       weekend and put in an application and got a job, and I stayed.

25          Q.    Where did you get a job?

26          A.    At Kroger.

27          Q.    What type job was it?

28          A.    Stocking groceries.

29          Q.    Okay. And how long did you stay before you came back

1 home to Winona?

2 A. About 3 and a half weeks.

3 Q. And when you left going to Texas, was Connie working?

4 A. Yes, she was.

5 Q. And where was she working?

6 A. At Richardson.

7 Q. All right, when you came back, was she working?

8 A. No, she wasn't. They had got laid off.

9 Q. Okay, was this about the time Richardson's Furniture  
10 was closing down?

11 A. Yes, sir.

12 Q. Did she subsequently go back to Texas with you?

13 A. Yes, sir. Well, my sister and her had been, you  
14 know, talking, and she wanted her to come out, said she could  
15 get her a job, so she went back with me.

16 Q. When you were in Texas, where were you living?

17 A. With my sister.

18 Q. And where was this in Texas?

19 A. 6909 Custa Road.

20 Q. What town?

21 A. Plano.

22 Q. That is a suburb of Dallas?

23 A. It's sort of like the, it's like 15 minutes right  
24 outside of Dallas.

25 Q. All right. Now did your family members know where  
26 you were?

27 A. Yes, sir.

28 Q. And subsequently to her going to Plano, did she get a  
29 job out there?

1 A. Yes, sir. She did.

2 Q. What type job did she get?

3 A. She was working in the deli at Albertson's grocery.

4 Q. Albertson's grocery?

5 A. Yes, sir.

6 Q. All right, did you get any other jobs while you were  
7 there?

8 A. Yes, sir. The first of January I got a job at  
9 Albertson's, night stocker.

10 Q. Night stocker. How many jobs did you have at that  
11 time?

12 A. I had only that one. Once I got the job at  
13 Albertson's, I left Kroger because it paid more.

14 Q. All right, let me back up. Now you came home and got  
15 Connie. That would have been in November?

16 A. Yes, sir.

17 Q. Did you come back any more before you were picked up  
18 in Texas?

19 A. Yes, sir. We come home like three times. It was  
20 like every, every two weeks.

21 Q. Okay. Would you come home on the weekends?

22 A. Yes, sir.

23 Q. Okay. Do you remember about when you came home each  
24 of those three times?

25 A. Well, I didn't come for Thanksgiving because I had to  
26 work. I think it was that weekend after.

27 Q. Weekend after Thanksgiving?

28 A. Yes, sir. Then I came home the weekend after  
29 Christmas.



1 Q. Okay.

2 A. It was the weekend after Christmas because I went  
3 back and went to work on the, on that Sunday.

4 BY MR. EVANS: Your Honor, I apologize for  
5 having to keep objecting, but I can see no relevance  
6 in any of this.

7 BY THE COURT: What is the relevance?

8 BY MR. BILLY GILMORE: I am just showing, Your  
9 Honor, where he was at all times, and he was not  
10 running from anybody. He was--

11 BY MR. EVANS: --The question is where was he  
12 when the folks at Tardy Furniture were murdered.

13 BY THE COURT: --it's not--

14 BY MR. BILLY GILMORE: --That has been answered.

15 BY MR. EVANS: Yes, it has.

16 BY THE COURT: Well, it's not relevant.

17 Sustained.

18 BY MR. BILLY GILMORE:

19 Q. All right. So when was the last time you were home  
20 before you went back to Texas and was arrested?

21 A. The weekend before I was arrested.

22 Q. Okay, when you were home that weekend, did you--

23 BY MR. EVANS: --Your Honor, did you not sustain  
24 my objection.

25 BY THE COURT: I thought I did.

26 BY MR. BILLY GILMORE: My question was, Your  
27 Honor, the weekend he was at home was he in contact  
28 with police. Did he see the police and did the  
29 police see him.

1 BY MR. EVANS: Which is not relevant.

2 BY THE COURT: Why would it be relevant?

3 BY MR. BILLY GILMORE: It shows he wasn't  
4 running from anybody.

5 BY THE WITNESS:

6 A. Yes, sir. I saw the police.

7 BY THE COURT: Okay, he has answered. I'm going  
8 to allow it, but you have established this point, I  
9 think, you know, at least made your point; I will put  
10 it that way. Let's move on.

11 BY MR. BILLY GILMORE:

12 Q. From the time of July the 16th, 1996, up until you  
13 were arrested, did you conceal yourself or run off or anything?

14 A. No, sir. I didn't.

15 Q. Did you cooperate fully with law enforcement?

16 A. Yes, sir.

17 Q. When you were arrested, did you voluntarily come  
18 back, or did they have to extradite you back?

19 A. I volunteer.

20 Q. One last question, Mr. Flowers; did you kill Ms.  
21 Bertha Tardy?

22 A. No, sir. I didn't.

23 Q. You did not?

24 A. No, sir.

25 BY MR. BILLY GILMORE: No further questions.

26 BY MR. EVANS: Your Honor, we have got a matter  
27 that they brought up that we need to be able to get  
28 Court approval of going into.

29 BY THE COURT: Okay. Let's take a break.

1 (WHEREUPON, THE COURT, ALL COUNSEL AND THE COURT  
2 REPORTER WENT TO CHAMBERS OUT OF THE PRESENCE OF THE  
3 JURY FOR THE FOLLOWING:)

4 BY MR. EVANS: I raised the point if he was on  
5 the witness stand, I don't know if he needed to be in  
6 here at this point or not.

7 BY THE COURT: I don't think that would affect  
8 it, so it's all right.

9 (DEFENDANT ENTERS CHAMBERS.)

10 BY MR. EVANS: May I proceed, Your Honor?

11 BY THE COURT: Uh-hum.

12 BY MR. EVANS: Your Honor, out of precaution, as  
13 the Court knows, I try never to go into any sensitive  
14 areas without bringing it to the Court's attention  
15 first and getting prior approval. We would not have  
16 considered under any possibility asking this  
17 Defendant if he had taken and failed two polygraph  
18 tests, but he was specifically asked by his counsel  
19 if he had taken any polygraph tests and admitted that  
20 he did. I intend to go into the fact and ask him if  
21 he, in fact, failed both of these polygraph tests and  
22 feel like I have an absolute right to do it. But I  
23 want to bring it to the Court's attention and ask the  
24 Court for a ruling before I go further.

25 BY MR. BILLY GILMORE: Your Honor, the question  
26 was not asked -- I think Mr. Evans ad-libbed a little  
27 bit there. We did not ask him did he take a  
28 polygraph, did he have a polygraph. We asked him did  
29 he take another test, and I was as surprised as

1           probably Mr. Evans that he mentioned that because I  
2           was talking about the gunshot residue kit.

3           **BY THE COURT:** You did, and I acknowledge you  
4           did not ask that, Mr. Gilmore. He did make that  
5           answer that he had taken a lie detector test. This,  
6           to be honest with you, is a very simple issue for me  
7           to answer. Mr. Evans, you may be correct to the fact  
8           that he opened the door when he allowed it, but I'm  
9           going to make a 403 ruling that the prejudicial  
10          effect outweighs the probative value. I'm not going  
11          to allow that to put that in. Okay. Let's give the  
12          jury about 5 or 10 minutes, and then we will start  
13          back.

14                 (DURING THE RECESS THAT FOLLOWED THE COURT WAS  
15                 INFORMED THAT THE SISTER-IN-LAW OF ONE OF THE JURORS,  
16                 MS. SUE ABERNATHY, HAD PASSED AWAY. AFTER THE COURT  
17                 INFORMED MS. ABERNATHY OF THIS PRIVATELY, THE COURT,  
18                 COUNSEL WITH THE EXCEPTION OF MR. BILLY GILMORE, AND  
19                 THE COURT REPORTER MET IN CHAMBERS WITH MS. SUE  
20                 ABERNATHY PRESENT FOR THE FOLLOWING:)

21           **BY THE COURT:** Let the record reflect that after  
22           the jury, that Ms. Sue Abernathy is juror number--

23           BY MS. ABERNATHY: 12.

24           **BY THE COURT:** Number 12. After the jury was  
25           selected, it was made known to me by her son, Terry  
26           Abernathy, that her sister-in-law who had been sick  
27           for some time had taken a turn for the worse and to  
28           the point where it might be critical. That  
29           information was passed through the Court to Ms.

1           Abernathy, and she elected to stay to see-- she had  
2           no objection to staying on the jury until, as long as  
3           that situation did not change. I have been notified  
4           this afternoon that their sister-in-law has passed  
5           away. Ms. Abernathy says that she, in that event she  
6           needs to be released from jury service. I'm going to  
7           release her, and I'm going to-- the first alternate  
8           is Charles Rousseau, and I will inform him that he is  
9           now a member of the jury.

10           Ms. Abernathy, I hope you will accept our  
11           condolences.

12           BY MS. ABERNATHY: Thank you.

13           BY THE COURT: And I appreciate your service,  
14           and you sure did it under a severe hardship, and I  
15           appreciate your attention to duty.

16           BY MR. JOHN GILMORE: Thank you, ma'am.

17           BY MR. EVANS: I'm sure sorry.

18           BY MS. ABERNATHY: Thanks.

19           BY THE COURT: But you are free to go.

20           BY MS. ABERNATHY: Okay, my car is in the  
21           parking lot, so I can just go back to the Ramada?

22           BY THE COURT: Yeah, I think Terry is waiting  
23           for you right outside the door.

24           BY MS. ABERNATHY: Thank you.

25           (FORMER JUROR MS. ABERNATHY LEAVES CHAMBERS.)

26           BY THE COURT: I don't see any necessity for me  
27           making a record on telling Charles Rousseau that he  
28           is on, do I? I'm going to go do that, but do y'all  
29           want me to put it on the record as far as him being

1 in here?

2 BY MR. JOHN GILMORE: I don't think that will be  
3 necessary. You can just put it on the record--

4 BY MR. HORAN: --that you have done it.

5 BY THE COURT: Let's hope nobody else gets  
6 sick.

7 (AFTER THE COURT PRIVATELY INFORMED MR. ROUSSEAU  
8 THAT HE IS NOW ON THE JURY, THE TRIAL CONTINUED IN  
9 OPEN COURT WITH ALL COUNSEL PRESENT AND WITH THE JURY  
10 PRESENT AND WITH THE DEFENDANT, CURTIS FLOWERS, STILL  
11 ON THE WITNESS STAND:)

12 BY THE COURT: If you would like to trade a  
13 swivel chair in on that one, that is fine.

14 BY A MALE JUROR: I am fine, Judge.

15 (NOTE: The Court was referring to the fact that  
16 one of the jurors had always been sitting in a  
17 straight back chair, and now with Ms. Abernathy gone,  
18 there was a vacant swivel chair that the juror could  
19 have sat in.)

20 BY THE COURT: All right, Mr. Gilmore-- or Mr.  
21 Evans; excuse me.

22 BY MR. EVANS: Thank you, Your Honor.

23 CROSS-EXAMINATION BY MR. EVANS:

24 Q. Before I go into any prior statements, I want to make  
25 sure that I know what you are telling the jury today. You are  
26 saying that the first time you left the house that morning was  
27 what time?

28 A. On what day?

29 Q. The day that the four people were murdered at Tardy

1 Furniture. Do you remember that day?

2 A. Yes, sir; I remember.

3 Q. What was the first time you left your house that day?

4 A. Between 9:15 and 9:30.

5 Q. Where did you go?

6 A. To my sister's house.

7 Q. How far does she live from you?

8 A. Next street.

9 Q. And you are sure it was 9:15 to 9:30 when you went  
10 over there?

11 A. Yes, sir.

12 Q. When did you remember that?

13 A. When did I remember that?

14 Q. Uh-hum.

15 A. I have always remembered that.

16 Q. Well, let's stop right there and go back to the day  
17 of the 16th. Do you remember giving a taped interview to Jack  
18 Matthews with the Mississippi Highway Patrol?

19 A. Yes, sir.

20 Q. What time did you tell him in that statement that you  
21 went over there?

22 A. I do believe my first statement I told him 9:30.

23 Q. Let me refresh your memory. I think in that first  
24 statement you said it was about 9:30 to 10 o'clock; is that  
25 right?

26 A. That's correct.

27 Q. So that is different, isn't it?

28 A. In what way?

29 Q. Well, is 9:30 or 9:30 to 10 o'clock the same thing?

1 A. I told him 9:30.

2 Q. Let me hand you your statement and let you look at  
3 it. Look at your statement right here and read--

4 A. --Could I hold that?

5 Q. When I get through, you can.

6 A. Okay.

7 Q. Read when it says you got up that morning. Those two  
8 lines right there that I have pointed to, I want you to read  
9 them to the jury.

10 A. (No response).

11 Q. Can you see the two lines I pointed to?

12 A. (No response).

13 BY THE COURT: You need to answer the question,  
14 Mr. Flowers.

15 BY THE WITNESS:

16 A. Yeah, I see the two lines.

17 Q. Read them to the jury.

18 A. It said, about 9:30 or something until 10:00.

19 Q. Read the line above it that I pointed to.

20 A. "Okay, about what time did you get up that morning?"

21 Q. What time did you get **up** that morning; right?

22 A. That's right.

23 Q. And you said 9:30 to 10:00?

24 A. That's right.

25 Q. So according to the first taped statement you gave  
26 Jack Matthews, you told him you didn't even get up until 9:30  
27 to 10 o'clock?

28 A. That's right.

29 Q. Now you are telling this jury that you went to your



1 sister's house at 9:15 to 9:30.

2 A. That's correct.

3 Q. So I guess you went to your sister's house before you  
4 got up?

5 A. No, sir. I went after I got up, and I was just  
6 confused about the time.

7 Q. You later told Jack Matthews that you went to your  
8 sister's house after 11 o'clock, didn't you?

9 A. Yes, sir. That was on that second statement, I  
10 believe.

11 Q. Well, did you get confused again?

12 A. Yeah, with the time. Because I go to my sister's  
13 house every day. You know, at that particular time, you know,  
14 I wasn't really trying to remember because I had nothing to  
15 hide.

16 Q. Well, that particular time just happened to be the  
17 same day, didn't it?

18 A. Did I give both of those statements the same day?

19 Q. Do you not understand my question?

20 A. No, I didn't.

21 Q. The day you talked to Jack Matthews was the same day  
22 that you went to your sister's house, wasn't it?

23 A. If it was on the 16th, yes, sir; it was.

24 Q. You talked to him about 1:30, didn't you?

25 A. I talked-- yes, sir; I talked with him and Mr. John  
26 Johnson and Mr. Miller.

27 Q. And 1:30 in the evening, you can't remember whether  
28 you went to your sister's house at 9:00, 9:30, 10:00 or 11:00  
29 that morning?

1 BY MR. BILLY GILMORE: Your Honor, I believe the  
2 statement shows he went there about 9:30.

3 BY MR. EVANS: Your Honor, this is  
4 cross-examination. I would like to finish before  
5 opposing Counsel tries to tell his witness what to  
6 say.

7 BY THE COURT: It is cross--

8 BY MR. BILLY GILMORE: --There is two  
9 statements. He is confusing the issue, Your Honor.

10 BY THE COURT: Well, you have got a right to  
11 come back on redirect. He is on cross-examination.

12 BY MR. EVANS:

13 Q. Can you answer my question?

14 A. ~~What was the question~~ now?

15 Q. On the same day that you say you went to your  
16 sister's house, at about 1:30 that day you couldn't remember  
17 whether you went to your sister's house at 9:00, 9:15, 9:30, 10  
18 o'clock or 11 o'clock?

19 A. It's not that I couldn't remember. I just, you know,  
20 was just confused about the time. But I remember going to my  
21 sister's house that morning.

22 Q. You knew that you had been picked up for questioning  
23 on murdering four people, didn't you?

24 A. Did I what now?

25 Q. You knew that you had been picked up for questioning  
26 on murdering four people, didn't you?

27 A. No, I didn't know why they had brought me down  
28 there.

29 Q. Oh, you thought they just picked you up to see what

1 time of day it was?

2 A. He said, he never did tell me. He said, "They want  
3 to talk to you and ask you a few questions downtown." He  
4 didn't say-- I asked him what about. He said, "They will let  
5 you know when you get there."

6 Q. And they did, didn't they?

7 A. Yes, sir. They did, when I got there.

8 Q. They let you know it was because four people had just  
9 been murdered at Tardy Furniture?

10 A. And they wanted to know my connection with Tardy.

11 Q. So you knew that you were being talked to because  
12 four people were murdered at Tardy Furniture--

13 A. --after I--

14 Q. --Is that true or not?

15 A. After I got there; I knew then.

16 Q. That's exactly what I asked you. I didn't ask you if  
17 you knew before you got there.

18 BY THE COURT: He answered the question.

19 BY MR. EVANS:

20 Q. So knowing that you were down there because four  
21 people had been murdered, you didn't think that was serious  
22 enough to try to pin down the right time, did you?

23 A. I estimated to the best that I could.

24 Q. What it amounts to, you keep trying to change it to  
25 where it fits what you want it to be, don't you?

26 A. No, sir.

27 BY MR. BILLY GILMORE: Your Honor, I object;  
28 argumentative.

29 BY MR. EVANS: That is a simple question on

1 cross-examination, Your Honor.

2 BY THE COURT: Yes, sir, but y'all, both of you  
3 have been over that territory a little bit. Let's go  
4 on.

5 (NOTE: Mr. John Gilmore is not present in the  
6 courtroom.)

7 BY MR. EVANS:

8 Q. I want to know now what you are telling the jury the  
9 truth is about the time that you went to your sister's house.  
10 Was it the first time you told Jack Matthews, the second time  
11 you told Jack Matthews, or what you are telling the jury today?

12 A. What I'm telling the jury today, which I believe is  
13 close to the first statement I gave.

14 Q. Well, it's not close if you said in the first  
15 statement you didn't get out of bed until 9:30 or 10:00, is  
16 it?

17 A. Well, I was just confused about the time, but what I  
18 have said today is true.

19 Q. The day that it happened you were confused, but here  
20 over a year later you are not?

21 (NOTE: Mr. John Gilmore enters the courtroom.)

22 A. But when, when, Your Honor--

23 Q. Is that right?

24 A. May I explain?

25 BY THE COURT: Yes, sir; you sure may.

26 BY THE WITNESS:

27 A. The way I see it, that when they called me down there  
28 for questioning, I'm not knowing what they are fixing to  
29 question me about. When he just jump up and ask me about the

1 time of my getting up and that, it's not registering right on  
2 because, you know, when I get up in the morning, I don't get up  
3 to expect for something to happen every day that I have to look  
4 at the clock and say, okay, I am getting up at this time, and I  
5 have to write this down. I don't do it like that.

6 Q. But we are talking about on the same day. We are not  
7 talking about asking you--

8 A. --We are talking about the 16th--

9 Q. --a month earlier. Let me finish my question. We  
10 are not talking about a month earlier that somebody is asking  
11 you what we did. We are talking about the same day. Do you  
12 have that much trouble remembering--

13 A. --It's just that--

14 Q. --what you do that day?

15 A. No, I do not. No, sir. When I got up the 16th, I  
16 didn't just look at the clock and say okay, I am getting up at  
17 9:30 or I am getting up at 10:00.

18 Q. You knew that you couldn't tell them the truth,  
19 didn't you?

20 A. I knew what now?

21 Q. That you couldn't tell them the truth.

22 A. I told the truth.

23 Q. Because if you told them the truth, you would have  
24 to admit that you went to Angelica and got the gun, wouldn't  
25 you?

26 A. No, sir.

27 Q. And you would have to admit that you walked by Mr.  
28 McChristian's house?

29 A. No, sir.

1 Q. And you would have to admit that you went to Tardy  
2 Furniture Store and murdered four people?

3 A. No, sir--

4 BY MR. BILLY GILMORE: --Your Honor, I'm going  
5 to object. This is improper cross; asked and  
6 answered; argumentative.

7 BY THE COURT: Overruled.

8 BY MR. EVANS: Thank you, Your Honor.

9 BY MR. EVANS:

10 Q. You knew that you couldn't tell them that you had  
11 been to Tardy Furniture, didn't you?

12 A. I hadn't been to Tardy Furniture.

13 Q. And according to you, you hadn't even been anywhere  
14 on the east side of Highway 51?

15 A. That's correct.

16 Q. And that is still what you are sticking to today?

17 A. Yes, sir.

18 Q. Hadn't fired a gun?

19 A. Hadn't fired a gun.

20 Q. Didn't have any Fila tennis shoes?

21 A. Didn't have any Fila tennis shoes.

22 Q. Do you admit that in your statement Jack Matthews at  
23 another part asked you what time that you went to your  
24 sister's, and you said it was about noon, about dinner, right  
25 in there?

26 A. Yes, sir. I do believe that that was in that second  
27 statement.

28 Q. So that is another different time that you said you  
29 went to your sister's house?

1 A. Yes, sir.

2 Q. Is that right?

3 A. Yes, sir.

4 Q. So now we know it's either 9 o'clock, 9:00 to 9:30,  
5 10:00, 11:00, or noon; is that right?

6 A. I don't know. You need to run that by me again, sir.

7 Q. Well, you are the one that has told all these  
8 versions. If you don't know, I don't know who does.

9 A. I told you I went to my sister's house the day of the  
10 16th between 9:15 and 9:30.

11 Q. Are you saying that all these other statements that  
12 you gave to Jack Matthews about the time you went to your  
13 sister's house are not true?

14 A. Well, like I say, I was confused on the time. I go  
15 to my sister's house every day.

16 Q. And the same day that we are talking about--

17 A. --and then the day that asked me--

18 Q. --that evening you were confused?

19 A. Which in my first statement I gave that I went to my  
20 sister's house between ~~9:00~~ and ~~9:15~~, 9:30.

21 Q. What brought it to your attention this same day that  
22 you needed to change your time that you were at your sister's  
23 house?

24 A. I didn't change it the same day.

25 Q. Well, all of this is on one taped statement that I'm  
26 holding right here.

27 A. I know and like I told you, I roughly estimated when  
28 he asked me. I wasn't thinking right offhand when he asked me  
29 that.

1 Q. So you changed your time at least three times in this  
2 one taped statement about what time you went to your sister's  
3 house, didn't you?

4 A. I'm not sure.

5 Q. And what time are you telling the jury today that you  
6 went by Jeff's?

7 A. It was after I left my sister's house. I know it was  
8 about, it may have been probably 10:30, something to 11:00.

9 Q. Do you remember what time you told Mr. Matthews you  
10 went by Jeff's store?

11 A. I told him it was about 11 something.

12 Q. Let me refresh your memory. Read the two lines that  
13 are highlighted.

14 A. (Pause while witness reads.) I don't remember telling  
15 him that.

16 Q. Read the two lines that are highlighted.

17 A. "You said you were at Jeff at some time, around what  
18 time?" And it has got on here, "About 12:45."

19 Q. So none of the times in this statement are right; is  
20 that true?

21 A. I can't say that they are. I can't say that they are  
22 not. I didn't write them.

23 Q. No, but you are the one that gave them, aren't you?  
24 You are the one that gave them, aren't you?

25 A. I don't recall telling him 12:45.

26 Q. But you saw it in the statement, didn't you?

27 A. Yes, sir. I saw it in the statement.

28 Q. Was anything you told them that day true?

29 A. Was anything I told them that day true?



1 Q. Uh-hum.

2 A. Yes.

3 Q. What?

4 A. That I went to my sister's house. I had the time  
5 confused, but I went to my sister's house between 9:15 and  
6 9:30.

7 Q. Well, can you explain to me how today you are able to  
8 remember so much better than you were that day?

9 A. How?

10 Q. (No response).

11 A. How is that?

12 Q. Uh-hum. How can you remember it today when you  
13 couldn't the same day?

14 A. Because first of all, I remember when me and Mr.  
15 Glover was standing out front talking about fishing. He was  
16 telling me about James told him about the spot that I had took  
17 him to, which was on Bluff Spring Road, and he wanted to go  
18 back. And I told him when James got off that evening, talk  
19 with him; if they wanted to go, we could.

20 Q. What it amounts to, you got your witnesses confused  
21 on when they needed to lie, didn't you?

22 A. No, I did not. No, sir.

23 Q. And once they had been pinned down and given  
24 statements about what time they saw you, you had to go back and  
25 change your story, didn't you?

26 A. No, sir.

27 Q. And that's exactly what you did, isn't it?

28 A. No, sir.

29 Q. You were mad because you got fired, let go or

1 whatever you want to call it from Tardy Furniture, weren't  
2 you?

3 A. No, sir. Mrs. Tardy did not fire me.

4 Q. And that's what you were mad and cussing about the  
5 Saturday before these murders, isn't it?

6 A. No, sir.

7 BY MR. BILLY GILMORE: Your Honor, I want to  
8 object to Counsel--

9 BY MR. EVANS:

10 Q. --What were you mad and cussing about?--

11 BY MR. BILLY GILMORE: --I think it is improper  
12 cross--

13 BY THE WITNESS:

14 A. --I wasn't mad and I wasn't cursing--

15 BY MR. BILLY GILMORE: He is testifying now.

16 BY THE COURT: Mr. Gilmore, he is on  
17 cross-examination--

18 BY MR. EVANS: --I am simply asking questions--

19 BY THE COURT: --He is entitled to ask leading  
20 questions.

21 BY MR. EVANS: May I proceed, Your Honor?

22 BY THE COURT: Yes, sir.

23 BY MR. EVANS:

24 Q. That's what you were mad about and cussing when  
25 Patricia Hollman heard you cussing on the Saturday before the  
26 murders, isn't it?

27 A. No, sir. I wasn't mad and I wasn't cursing.

28 Q. What were you cussing about?

29 A. I wasn't cursing.

1 Q. Oh, you wasn't cussing?

2 A. No, sir. I wasn't.

3 Q. So none of that is true either?

4 A. None of that is true.

5 Q. You probably don't even cuss, do you?

6 A. From time to time.

7 Q. How much damage did you do to the batteries?

8 A. They just fell off the truck and cracked.

9 Q. Do you remember laughing when they cracked?

10 A. No, sir.

11 Q. You don't remember laughing in front of several  
12 people and--

13 A. --No, sir.

14 Q. --about the damage that you had done?

15 A. Wasn't no one around when it happened.

16 Q. Folks that work there at the store wasn't around?

17 A. No one but Jimmy Sanders.

18 Q. It was a couple more besides him too, wasn't it?

19 A. Well, they was in the back; wasn't no one at the  
20 truck but me and him when I went to take the batteries back.

21 Q. But you thought it was funny, didn't you?

22 A. No, sir. I wasn't laughing.

23 Q. You knew that they weren't going to let you go back  
24 to work after that because of your attitude, didn't you?

25 A. No, sir. That is not correct.

26 Q. That is why you didn't even bother to go back for  
27 several days?

28 A. No, sir. That is not correct. When I dropped these  
29 batteries off the truck, it happened in the morning, and I

1 worked the rest of that day up until noon.

2 Q. And after you had already gotten mad, you were going  
3 to confront Ms. Tardy. So you called her to see if you had a  
4 paycheck coming, didn't you?

5 A. Yes, sir. I did call her.

6 Q. And she said no, Curtis, you don't--

7 A. --that's correct.

8 Q. Because of the damage that you did, you don't have  
9 any money coming?

10 A. That's correct.

11 Q. And that \$82 paycheck over there that you wanted, you  
12 weren't going to get. Isn't that right?

13 A. She told me that it had been taken out because of the  
14 battery. I didn't have no problem with that.

15 Q. You didn't?

16 A. No, sir.

17 Q. And that is not what you were cussing and raising  
18 cane about?

19 A. I wasn't cursing, and I wasn't raising sand.

20 Q. And you were going to show Ms. Tardy. You were going  
21 to go down there and you were going to take a gun, and you were  
22 going to get any money that you could get your hands on, wasn't  
23 you?

24 A. No, sir.

25 Q. And glory be, you knew where you could get a gun  
26 because you knew Doyle carried a gun in his car, didn't you?

27 A. That is not correct. I knew he carried a gun.

28 Q. Well, which is true? It's not correct or you knew he  
29 carried a gun?

1           A.    I knew he carried a gun.

2           Q.    And you went to his car, saw Katherine Snow come out,  
3           so you just leaned against the car until she went inside. You  
4           broke in his glove compartment and took his gun, didn't you?

5           A.    No, sir.

6           Q.    Then you had to wait because it wasn't time for the  
7           store to open, was it?

8           A.    I didn't take his gun.

9           Q.    So you walked on back, cut through, killing some time  
10          until the store opened, didn't you?

11          A.    No, sir.

12          Q.    You didn't know that Robert was going to be working  
13          down there that day, did you?

14          A.    I didn't know anyone was down there that day because  
15          I never went down there.

16          Q.    With it being Robert's first day to work, you  
17          wouldn't have known that he was working there that day, would  
18          you?

19          A.    I wouldn't have known who was down there because I  
20          didn't go down there.

21          Q.    Would you answer my question. You wouldn't have  
22          known he was down there, would you?

23          A.    No, sir. I wouldn't.

24          Q.    With it just being BoBo's second day, you wouldn't  
25          have known he was down there, would you?

26          A.    No, sir. I wouldn't.

27          Q.    So for all you knew, the only two people that would  
28          have been there is Ms. Bertha Tardy and Carmen Rigby; is that  
29          right?

1 A. No, sir; I wouldn't have known that.

2 Q. Well, you knew they were there every morning, didn't  
3 you?

4 A. No, sir.

5 Q. How long did you work there?

6 A. A week.

7 Q. Are you telling me in a week's time you didn't know  
8 what the normal operation of that business was?

9 A. No, because there was a couple of days Ms. Carmen  
10 wasn't there.

11 Q. Well, are you telling me that you didn't know that  
12 Ms. Tardy would be there to open the door at 9 o'clock?

13 A. I couldn't tell you that. Mr. Tardy might have  
14 opened; I don't know.

15 Q. Tell me why you couldn't tell me that--

16 A. --because I do not know--

17 Q. --She opened the door every day that you worked,  
18 didn't she?

19 A. Mr. Tardy unlocked the door a couple of mornings.

20 Q. Are you telling me that any day that you were there  
21 Ms. Bertha Tardy was not there at 9 o'clock?

22 A. Yeah, she was there. You said unlocked the door. I  
23 said Mr. Tardy--

24 Q. --I'm not playing games--

25 A. --I'm not playing games either, sir--

26 Q. --I'm asking you questions.

27 A. Ms. Tardy has not always unlocked the door. Mr.  
28 Tardy has done it a couple of mornings.

29 Q. You knew that at 9 o'clock that morning Ms. Tardy

1 would be there, didn't you?

2 A. I don't, I'm not sure what you are saying.

3 Q. What part of that do you not understand?

4 A. What you are saying.

5 Q. I will make it real simple for you, Curtis.

6 A. Okay.

7 Q. Do you know what 9 o'clock in the morning is?

8 A. Yes, sir.

9 Q. Do you know who Ms. Bertha Tardy was?

10 A. Yes, sir.

11 Q. You knew that she was going to be there at 9 o'clock  
12 every morning, didn't you?

13 A. I don't know if she was going to be there at 9  
14 o'clock every morning.

15 Q. Why not?

16 A. I don't know. Anything could happen.

17 Q. Yeah, you could kill her, couldn't you?

18 A. No, sir.

19 BY MR. BILLY GILMORE: Your Honor, I object to  
20 comments by Counsel.

21 BY THE COURT: Sustained. And he has answered  
22 that question. Let's move on.

23 BY MR. EVANS:

24 Q. My whole point is you also knew that Ms. Rigby  
25 normally made a deposit in the morning, didn't you?

26 A. No, sir.

27 Q. You knew that she made one every morning that you  
28 worked there, didn't you?

29 A. No, sir.

1 Q. Well, were you blind?

2 A. No, sir.

3 Q. You could hear?

4 A. When I come to work at Tardy's, my first job was to  
5 go in, turn the lights on, put the flag out front, and I am in  
6 the back from then until I get ready to make a delivery, once I  
7 dust mop them aisles.

8 Q. You are telling these folks on the jury; you expect  
9 them to believe that you worked there a week, and you didn't  
10 realize that she left every morning with the bank bag to go  
11 make a deposit?

12 A. No, sir.

13 Q. And you want them to believe that.

14 A. I couldn't, I didn't see her every morning, what they  
15 do up front. My job was in the back.

16 Q. You made sure that you got down there at a time that  
17 you thought she would be gone to the bank, didn't you?

18 A. No, sir.

19 Q. You thought the only person you would have to kill to  
20 rob the store was Ms. Tardy, didn't you?

21 A. No, sir.

22 Q. And you didn't have any problem with killing her, did  
23 you?

24 A. I didn't kill her.

25 Q. You shot everybody in there in the head, didn't you?

26 A. No, I didn't.

27 Q. But you made some mistakes, didn't you?

28 A. No, sir. I didn't do it.

29 Q. You didn't wash all the gunshot residue off your



1 hands?

2 A. I didn't do it.

3 Q. And you forgot and stepped in the blood?

4 A. No, sir. I didn't.

5 Q. That is just a few of the mistakes you made, isn't  
6 it?

7 A. No, sir. I didn't do it.

8 Q. Then when you went and gave your statement, you gave  
9 all kinds of inconsistencies you could be caught in, didn't  
10 you?

11 A. No, sir. I didn't.

12 Q. Starting with the fact that you weren't anywhere on  
13 the east side of Highway 51 that day?

14 A. And I wasn't.

15 Q. You didn't wear glasses back then either, did you?

16 A. No, sir.

17 Q. When did you start wearing glasses?

18 A. Uh, shortly after I moved to Dallas.

19 Q. Did anyone tell you you needed to try to change your  
20 appearance?

21 A. No, sir. I was told I needed glasses.

22 Q. The size shoes that were taken off of you the day you  
23 were arrested were ten and a halves, weren't they?

24 A. All depends on which ones. The ones that was taken  
25 off me was 11.

26 Q. If you don't understand that question--

27 A. --The ones that was collected from my house was ten  
28 and a half which were my work shoes that I got from my father,  
29 but--

1 Q. --So you are saying that Jack Matthews and the expert  
2 from the Crime Lab were both lying on you about the Nike shoes  
3 being a ten and a half?

4 A. Well, the shoes he took off my feet he gave back.  
5 The shoes that he collected from my house when I wasn't there  
6 are the ones that are ten and a half.

7 Q. So you are saying that both of them were wrong?

8 A. I'm not saying; I am saying the ones I wear are 11.

9 Q. I want to make sure I understand what you are  
10 saying. You are saying the shoes that were taken off your feet  
11 were not the ones that were sent to the Crime Lab?

12 A. I don't know which ones you sent to the Crime Lab.

13 Q. The Nikes that came off of your feet the day you were  
14 picked up for questioning, the first day?

15 A. The day I was picked, the first day I was picked up  
16 for questioning didn't no one take any shoes from me.

17 Q. They took a pair of Nike ten and a halves, didn't  
18 they?

19 A. He asked to look at them, and he gave them back. He  
20 didn't take them away from me.

21 Q. And they were sent to the Crime Lab, weren't they?

22 A. I'm not sure. Not the ones I had on my feet.

23 Q. And the size ten and a half Filas were yours too?

24 A. No, sir. They wasn't.

25 Q. You have had to change a lot of different parts of  
26 your story during this trial, haven't you?

27 A. No, sir.

28 Q. You are familiar with Doyle's car, aren't you?

29 A. I know the car when I see it; yes, sir.

1 Q. You have even had to change the color of it today,  
2 haven't you?

3 A. How have I changed the color?

4 Q. I'm asking you the questions.

5 A. No, sir. I haven't changed the color.

6 Q. After a witness that you put on mistakenly said it  
7 was a two tone color, you had to try to tell the jury the same  
8 thing, didn't you?

9 A. It is two tone, brown and--

10 Q. --that car is as solid color brown as it can be,  
11 isn't it? I have got a picture of it.

12 A. I want to see.

13 Q. It's solid brown, isn't it?

14 A. It's two tone to me.

15 Q. Two tone to you?

16 A. Yeah.

17 Q. You show me a two tone in that picture.

18 A. (Hands photograph to witness) You can't tell from the  
19 back. It's a brown, light brown and dark brown. You have a  
20 side view of the picture-- of the car?

21 BY MR. JOHN GILMORE: Your Honor, I want to  
22 object. The State has a side view picture of the  
23 car--

24 BY THE WITNESS:

25 A. --Yeah, and it is two tone.

26 BY THE COURT: Wait a minute.

27 BY MR. JOHN GILMORE: --that would show adequate  
28 color. If they want to put it in at this time, we  
29 would have no objection.

1 BY MR. EVANS: I may put it in in a minute, but  
2 it will be when I get good and ready to put it in.

3 BY THE COURT: Well, let me ask you--

4 BY THE WITNESS:

5 A. --and it is two tone.

6 BY THE COURT: Wait a minute, Mr. Flowers. We  
7 can't all talk at once. I thought it had already  
8 been in. What is this up here?

9 BY MR. EVANS: This is a picture that shows the  
10 back of the car, Your Honor.

11 BY THE COURT: Is it in evidence?

12 BY MR. EVANS: Yes, sir. That picture is in  
13 evidence.

14 BY THE COURT: Okay. The objection is  
15 overruled.

16 BY MR. EVANS:

17 Q. There is no two tone on there, is it?

18 A. Not from the back.

19 Q. As a matter of fact, you looked at a picture that  
20 shows the sun glare on the car, and you thought from that  
21 picture it was two tone, didn't you?

22 A. It is two tone from the side view. You can't tell  
23 from the back.

24 Q. You can tell very easily.

25 BY MR. EVANS: Your Honor, I offer this  
26 photograph into evidence. It's Exhibit 53.

27 BY THE COURT: Any objection? I assume it's the  
28 car.

29 BY MR. BILLY GILMORE: No objection, Your Honor.

1 BY MR. EVANS: Yes, sir; it is.

2 BY MR. JOHN GILMORE: I would like to look at it  
3 right quick.

4 BY MR. BILLY GILMORE: Make sure it's the same  
5 one.

6 (PHOTOGRAPH WHICH WAS PREVIOUSLY MARKED AS  
7 STATE'S EXHIBIT S-53 FOR IDENTIFICATION WAS NOW  
8 RECEIVED IN EVIDENCE.)

9 BY THE COURT: All right, now he has given his  
10 opinion about it, and now you have got two  
11 photographs in about it, and that pretty much  
12 explores that issue. Let's kind of move on.

13 BY MR. EVANS: Yes, sir. I have one other  
14 question on this, Your Honor.

15 BY MR. EVANS:

16 Q. You show me where there is a foot wide light colored  
17 brown on this car?

18 A. I didn't say it had a foot wide light colored brown  
19 on it. I said it was two tone. It's a dark brown and a light  
20 brown.

21 BY MR. EVANS: May I pass these photographs to  
22 the jury, Your Honor?

23 BY THE COURT: They are in evidence. You sure  
24 can.

25 (Two photographs of car passed to the jury.)

26 BY MR. EVANS:

27 Q. You also changed the times that you said the two  
28 children at the house went to their grandmother's house, didn't  
29 you?

1           A.    No, sir. I didn't. I said when I left the house,  
2 they went to their grandmother's. I never did say a time.

3           Q.    You didn't say at one point they went about 9  
4 something, and at another point they went about 11 something?

5           A.    I don't recall saying that.

6           Q.    You don't recall?

7           A.    I remember saying each time that I left the house  
8 they went to their grandmother's.

9           Q.    Well, would you agree that you have given quite a few  
10 different times about when you left the house?

11          A.    Yes, I did.

12          Q.    Now you have told on direct examination while ago  
13 that Mr. Veal and Mr. Hawkins got out of jail immediately after  
14 you supposedly told them about committing these murders; is  
15 that right?

16          A.    Yes, sir; they did.

17          Q.    Well, I have got a question I want you to think about  
18 before you answer. If you didn't tell them that you murdered  
19 the folks, how do you know what day you supposedly told them  
20 that?

21          A.    Because the only day that they left out of the cell  
22 was the only day that they left out, and when they come back,  
23 they got their things and left.

24          Q.    Well, you haven't answered my question.

25          A.    What was the question?

26          Q.    If you don't know when you supposedly told them that  
27 you murdered the four folks at Tardy Furniture, how can you  
28 tell them today that they got out the same day you supposedly  
29 told them?

1 A. I didn't tell them--

2 Q. --That's exactly what you told the ladies and  
3 gentlemen of the jury just a few minutes ago.

4 A. --what they said. Well, I didn't tell them what they  
5 say I said, and all the time that Hawkins and Veal was there  
6 they was in the cell. They only left out one time, and that  
7 one time when they come back, they got their things and left.

8 Q. My question is how do you know the day they left is  
9 the day you told them about it or that they said you told them  
10 about it when nobody mentioned what day you told them?

11 A. Well, I don't know--

12 Q. --That is another lie you got caught in?

13 A. --what day they went to the Sheriff and told him this,  
14 but I am just saying that the time that they left the cell had  
15 to have been the time that they went down and lied on me  
16 because they left jail.

17 Q. So you made that up to sound good today too, didn't  
18 you?

19 A. No, I did not. No, sir.

20 BY MR. EVANS: Your Honor, I don't have any  
21 further questions of this witness. One moment.

22 (Mr. Evans confers with Mr. Horan.)

23 BY THE COURT: Are you through?

24 BY MR. EVANS: Yes, Your Honor.

25 BY THE COURT: All right, redirect?

26 BY MR. BILLY GILMORE: Yes, Your Honor.

27 REDIRECT EXAMINATION BY MR. BILLY GILMORE:

28 Q. Mr. Flowers, I believe you made a statement on July  
29 the 16th, 1996, to some officers. Was that statement recorded

1 that day?

2 A. No, sir. It wasn't.

3 Q. All right, did you make another statement later on  
4 that week?

5 A. Yes, sir. I made two or three more statements.

6 Q. All right, do you know which ones they recorded or  
7 which ones they didn't record?

8 A. No, sir.

9 Q. But did they record the first one?

10 A. No, sir. They didn't.

11 Q. They did not. So if the officer's notes reflect that  
12 you said somewhere around 9:30 AM was the time you used the  
13 first day?

14 A. Yes, sir.

15 Q. Is that correct?

16 A. Yes, sir.

17 BY MR. EVANS: Your Honor, there has been  
18 nothing about officer's notes. We are talking about  
19 a taped statement. That is not officer's notes that  
20 I was referring to.

21 BY MR. BILLY GILMORE: But I am, Your Honor.

22 BY THE COURT: But it's redirect examination  
23 too. You are limited to what he went into on cross.

24 BY MR. BILLY GILMORE: Well, Your Honor, there  
25 was some confusion as to whether it was one, two,  
26 three taped statements or statements made. We are  
27 trying to clarify that.

28 BY THE COURT: There was no confusion in  
29 relation to what was brought out on cross-



1 examination.

2 BY MR. BILLY GILMORE:

3 Q. The first statement made on the 16th was not taped?

4 A. No, sir. It wasn't.

5 Q. All right, the one on the 18th, was it taped?

6 A. Not that I recall.

7 Q. Okay, what about a later statement?

8 A. Yes, sir.

9 Q. Okay. So there was actually three statements made,  
10 and all of them weren't recorded?

11 A. No, sir. They wasn't.

12 Q. Did officers make notes when they talked to you?

13 A. Yes, sir.

14 Q. To your best recollection the first day or the 16th  
15 when they talked to you, did you tell them around 9:30?

16 A. Yes, sir. I did.

17 Q. And that's what you told this Court today; is that  
18 correct?

19 A. Yes, sir.

20 Q. Is that the truth?

21 A. Yes, sir. It's the truth.

22 Q. You are not telling to the exact minute. You are  
23 saying around 9:30; is that correct?

24 A. Yes, sir.

25 Q. Now as far as Mr. Hawkins and Mr. Veal leaving the  
26 jail, you don't know what date. Is that what you're saying?

27 A. Yes, sir. I don't know what date they left.

28 Q. All you know is they left--

29 BY MR. EVANS: --I object to him leading his

1 witness and telling him what to say.

2 BY THE COURT: Sustained.

3 BY MR. BILLY GILMORE:

4 Q. The dates, whatever it may have been that Mr. Veal  
5 and Mr. Hawkins left to go talk to somebody, did they leave  
6 immediately thereafter?

7 A. Yes, sir. They did.

8 Q. Did you see either one of them after that day?

9 A. No, sir.

10 Q. Now Mr. Evans asked you about opening the doors of  
11 the store and various things. Mr. Tardy opened the doors, I  
12 believe you said some?

13 A. Yes, sir.

14 Q. Every day you was up there, did Mr. Tardy come?

15 A. Yes, sir. He did.

16 Q. Okay. Who actually showed you around the first day  
17 up there to tell you what your job would be?

18 A. Mr. Tardy.

19 Q. Now you mentioned something about you cut the lights  
20 on, raised the flag?

21 A. Yes, sir.

22 Q. And you went to the back of the store. What are you  
23 talking about going to the back of the store?

24 A. It's back, something like a workshop, you know. I  
25 would like fix, try to fix repairs and stuff like that,  
26 straightening up mattresses, put them in the right spots, stuff  
27 like that.

28 Q. In other words, this is something that is not out in  
29 the display where all the furniture is displayed?

1 A. No, sir; it isn't.

2 Q. Is that where you put furniture together, make  
3 repairs on the furniture?

4 A. Yes, sir.

5 Q. Is that what you were hired for?

6 A. I was hired to deliver furniture.

7 Q. Okay, and when you wasn't delivering furniture, what  
8 did you do?

9 A. I worked in the back.

10 Q. Okay. So you wasn't out in the showroom part of the  
11 store during the day unless you just happened to walk out  
12 there?

13 A. Yes, sir.

14 BY MR. EVANS: I object to him leading his  
15 witness.

16 BY THE COURT: Sustained.

17 BY MR. BILLY GILMORE:

18 Q. The majority of the day where would you stay at the  
19 furniture store?

20 A. In the back.

21 BY MR. BILLY GILMORE: Court indulge me a  
22 moment.

23 (Defense Counsel confer.)

24 BY MR. BILLY GILMORE: No further questions.

25 BY THE COURT: You may return to your seat by  
26 your Counsel. Who will you have next?

27 BY MR. BILLY GILMORE: Your Honor, if we could  
28 have a short recess. I believe there is some  
29 witnesses, possible witnesses here. I'm not sure at

1           this time.

2           **BY THE COURT:** I will give you about 5 or 10  
3 minutes at the max. Ladies and gentlemen, these are  
4 some witnesses that have just arrived. I'm going to  
5 give them about 10 minutes to talk to them.

6           (FOLLOWING AN AFTERNOON RECESS AT APPROXIMATELY  
7 3:45 P.M. ON OCTOBER 16, 1997, THE TRIAL CONTINUED IN  
8 OPEN COURT WITH ALL COUNSEL AND THE DEFENDANT PRESENT  
9 FOR THE FOLLOWING:)

10          **BY THE COURT:** For the audience information, Ms.  
11 Abernathy, a juror, had a death in the family and had  
12 to leave, and so I have replaced her with the first  
13 alternate, Mr. Rousseau. I am ready.

14          JURY ENTERS THE COURTROOM.

15          **BY THE COURT:** Who will you have next?

16          **BY MR. BILLY GILMORE:** Your Honor, we call  
17 Frederick Veal.

18          **BY THE COURT:** Okay, get him.

19          **BY MR. BILLY GILMORE:** I'm not sure whether he  
20 is here or not.

21          **BY THE COURT:** Well, I sure don't, so he is your  
22 witness.

23          **BY THE BAILIFF:** Who is it?

24          **BY MR. BILLY GILMORE:** Frederick Veal.

25          **BY THE COURT:** Mr. Miller, you will need to go  
26 out just a second. They called you prematurely.

27          (Bailiff leaves the courtroom and returns and  
28 speaks to Mr. Gilmore.)

29          **BY THE COURT:** He is not here?

1 BY THE BAILIFF: No, sir.

2 BY THE COURT: Okay, who will you have next?

3 BY MR. BILLY GILMORE: Your Honor, for the  
4 Court's record, we were not aware that we would need  
5 Mr. Veal until this morning. A subpoena instanter  
6 was issued for him immediately, and evidently he has  
7 not been found. We would move for a recess until in  
8 the morning to secure his presence here to testify.

9 BY THE COURT: No, he was finally excused by  
10 both parties. Both parties had him here where he was  
11 available to testify, and the State and the Defense  
12 both released him yesterday. I'm not going to  
13 continue this matter on that basis, and I have  
14 already ruled on that. Who will you have next?

15 BY MR. BILLY GILMORE: The Defense rests, Your  
16 Honor.

17 DEFENDANT RESTS.

18 BY THE COURT: Rebuttal?

19 BY MR. EVANS: Very briefly, Your Honor.

20 BY MR. HORAN: Wayne Miller.

21 BY THE COURT: Mr. Miller.

22 WAYNE MILLER,

23 a white male having been called as a rebuttal witness by the  
24 State of Mississippi and having been previously sworn and  
25 previously testified, testified again as follows, to-wit:

26 BY MR. HORAN: May I proceed, Your Honor?

27 BY THE COURT: Uh-hum.

28 DIRECT EXAMINATION BY MR. HORAN:

29 Q. You are Wayne Miller, the same Wayne Miller that

1 testified under oath in this trial previously?

2 A. Yes, sir; I am.

3 Q. I want to direct your attention to July the 16th,  
4 1996. Did you at any time on that day or any date subsequent  
5 to that conduct any gunshot residue kit on the Defendant,  
6 Curtis Flowers?

7 A. No, sir; I did not.

8 Q. Were you present when one was conducted?

9 A. I was present when it was being done by Officer  
10 Matthews.

11 Q. And to your knowledge, he followed all the  
12 instructions provided by the gunshot residue kit?

13 A. Yes, sir; he did.

14 BY MR. HORAN: No further questions of this  
15 witness.

16 CROSS-EXAMINATION BY MR. BILLY GILMORE:

17 Q. Captain Miller?

18 A. Yes, sir.

19 Q. Were you present on July the 16th, 1996, when Curtis  
20 Flowers was first interviewed there at the Winona Police  
21 Department?

22 A. The very first interview?

23 Q. Yes, sir; at 1:30, I believe.

24 A. I was not there then; no, sir, not during that  
25 interview. I was at the Police Department but not in the  
26 interview with him.

27 Q. All right, sir. When was the residue test done?  
28 What day?

29 A. It was done on the 16th around 1:30 or shortly after.

1 Q. Were you present?

2 A. I was present then, but I was not present during the  
3 interview.

4 Q. All right, sir. Now Mr. Miller, isn't it true that  
5 you attempted to do the first kit, and you made an error and  
6 had to throw it in the trash and start over?

7 A. No, sir. I did not. I did not do that.

8 Q. You don't remember taking a kit and starting on it,  
9 and Mr. Matthews said, Did you go by the instructions? Do you  
10 have the right hand in the right bottle and left hand in the  
11 left bottles?

12 A. No, sir. I did not do that. I did not have -- there  
13 was not but one kit there.

14 Q. You don't remember Mr. John Johnson going out and  
15 getting another kit for Mr. Matthews to use?

16 A. No, sir.

17 Q. You don't remember that?

18 A. That did not happen.

19 Q. Did not happen, okay. But you were there when Mr.  
20 Matthews did the--

21 A. --I was there when Mr. Matthews started administering  
22 that kit, and I got a phone call and walked out of that  
23 particular room that they were in.

24 Q. Okay, sir. So you don't really know how he went  
25 about doing the test?

26 A. I was not present when he, when he completed the  
27 test.

28 BY MR. BILLY GILMORE: All right, sir. No  
29 further questions.

1 BY MR. HORAN: Nothing further of this witness.

2 BY THE COURT: You may return to the witness  
3 room.

4 WITNESS LEAVES COURTROOM.

5 BY MR. EVANS: Patricia Hollman.

6 (AFTER A PAUSE, THE STATE MADE THE FOLLOWING  
7 FURTHER ANNOUNCEMENT:)

8 BY MR. EVANS: Your Honor, the State at this  
9 point rests on its entire case. We do not wish to  
10 call any further witnesses.

11 STATE RESTS ON REBUTTAL.

12 BY THE COURT: Okay. Ladies and gentlemen, the  
13 State has now rested in this matter. I have to  
14 consider the instructions on the law that I'm going  
15 to give you in this case. I'm going to give you a  
16 recess for a while and let you go back to the jury  
17 room and have refreshments and whatever. Let me see  
18 how long that takes. If it does not take too long,  
19 we may go ahead and wind up today. I just need to  
20 kind of get an assessment of where I am on that.

21 In any event, the next phase is I meet with the  
22 lawyers; we get the instruction on the law; I then  
23 read those instructions to you. They get to argue  
24 their case to you, and then it's submitted to you for  
25 your determination on the guilt phase of this trial.  
26 I will try not to be too long in making some kind of  
27 determination, but I will ask you to go back to the  
28 jury room now.

29 (WHEREUPON, THE COURT, ALL COUNSEL, THE



1           DEFENDANT, AND THE COURT REPORTER WENT TO CHAMBERS  
2           OUT OF THE PRESENCE OF THE JURY FOR THE CONSIDERATION  
3           OF INSTRUCTIONS:)

4           COURT'S INSTRUCTIONS C-1, C-2, C-3: BY THE COURT: If you  
5           want to take a look at 1, 2 and 3. You have seen them before,  
6           but make sure you agree that that is what we have done before.

7                     (Court's instructions handed to Defense  
8           Counsel.)

9                     BY MR. EVANS: Walter is changing two changes,  
10           and then ours will be ready.

11                    BY THE COURT: Did y'all tell me that you had  
12           done a limiting instruction? I thought y'all told me that.

13                    BY MR. HORAN: Yes, sir.

14                    BY MR. EVANS: Is there one?

15                    BY THE COURT: Well, if not, I will do one. But  
16           that was my understanding y'all had.

17                    BY MR. HORAN: We have prepared one.

18                    BY MR. EVANS: I'm not sure if it is on there.  
19           Are you going to check and see if Walter has got it?

20                    (Mr. Horan left chambers and then shortly  
21           thereafter, Mr. Evans left also.)

22                    BY MR. BILLY GILMORE: The original  
23           instructions, I guess, are in the court file. Do they need  
24           to-- are they here, or do we--

25                    BY THE COURT: --I don't have them.

26                    BY MR. BILLY GILMORE: (To Mr. John Gilmore) Go  
27           see if you can get them.

28                    BY THE COURT: Do you have any objection to 1,  
29           2, and 3?

1 BY MR. BILLY GILMORE: I haven't read but just  
2 one, Judge.

3 (Mr. Horan enters chambers and hands an  
4 instruction to the Court.)

5 BY MR. HORAN: We are going to submit it with  
6 the last sentence out.

7 INSTRUCTION C-4: BY THE COURT: Okay, I tell you what. I  
8 want you to look at this. Both of you can look at it. I am  
9 thinking about it, adding this language, that sentence; none of  
10 the citations but that paragraph without the citations.

11 BY MR. HORAN: Which one?

12 BY THE COURT: I am thinking about saying,  
13 "Evidence of a prior criminal activity on the part of one  
14 criminally accused is inadmissible where the prior offense has  
15 not resulted in a conviction except" I mean, "except, however,  
16 that the State has a legitimate interest in telling a rational  
17 and coherent story of what happened and where substantially  
18 necessary to present to the jury the complete story of the  
19 crime, evidence or testimony may be given even though it may  
20 reveal or suggest other crimes." And that is all the law.  
21 Then I want to give, then I want to pick up there and say,  
22 "In this case evidence has been offered by the State that the  
23 Defendant may have committed crimes other than the capital  
24 murder of Bertha Tardy," and then finish it out like that.

25 BY MR. HORAN: Let me look at that for just a  
26 second.

27 BY THE COURT: And then I think in doing that,  
28 they get the complete picture of what the law is.

29 BY THE CLERK: The Court instructions are in

1 here at the back of this file.

2 BY THE COURT: Okay, hand them to them, and they  
3 can pick out which ones they want to submit.

4 BY THE CLERK: And these orders were filed, so  
5 these must have been just copies.

6 BY THE COURT: Okay, I don't care about keeping  
7 them, so you can throw them away. I must have signed two of  
8 them. It looked like the original.

9 BY THE CLERK: It did, but we already had the  
10 original.

11 BY MR. BILLY GILMORE: Do you want us to take  
12 them out of the file, Judge?

13 BY THE COURT: Uh-hum.

14 BY MR. BILLY GILMORE: Or you want to leave them  
15 in the file?

16 BY THE COURT: Because I have got to write on  
17 them. It's too big a file for me to write on.

18 BY MR. BILLY GILMORE: It is getting fat, isn't  
19 it?

20 (Off the record briefly; Mr. Evans returned and  
21 conferred with Mr. Horan).

22 BY THE COURT: It more fully states the law than  
23 this bare bones that we have got, and I think, I think it makes  
24 that a better instruction.

25 BY MR. EVANS: All right. Is that the one we  
26 need to change now? Walter--

27 BY THE COURT: --Do you want me to write on what  
28 you have got?

29 BY MR. EVANS: Do you want us to do it?

1 BY THE COURT: Well, I would prefer. Y'all have  
2 got the ability.

3 BY MR. HORAN: We have got it up on the screen.

4 BY THE COURT: You have got it up. Here, let me  
5 show you what I want.

6 BY MR. HORAN: Underline what you want.

7 BY THE COURT: Okay. I want-- well, I'm going  
8 to just put it in brackets, Kevin.

9 BY MR. HORAN: All right.

10 BY THE COURT: That to there. Then I want you  
11 to put "except."

12 (The Court Reporter looked over at the case the  
13 Court was reading from which prompted the following:)

14 BY THE COURT: I know I am leaving you out of  
15 the equation.

16 BY THE COURT REPORTER: I was just looking to  
17 see what case you were getting it from.

18 BY THE COURT: It's out of Brock v. State. The  
19 whole instruction is out of Brock v. State. It's just that we  
20 are going to expand on what Brock says.

21 (Pause).

22 BY THE COURT: Okay, do you see what I'm doing?

23 BY MR. HORAN: I see. Do you want this first?

24 BY THE COURT: Uh-hum.

25 BY MR. EVANS: Judge, do you have a form of the  
26 verdict for this case?

27 BY THE COURT: Do I have one?

28 BY MR. EVANS: Or do you want--

29 BY THE COURT: I would appreciate it if y'all

1 have one. I like y'all's deal better than mine.

2 BY MR. EVANS: All right. Kevin, you ask--

3 BY MR. HORAN: They are supposed to be working  
4 on that.

5 (Mr. Horan leaves chambers.)

6 FURTHER ON COURT'S INSTRUCTIONS C-1, C-2, C-3: BY THE

7 COURT: 1, 2 and 3 are my standard instructions.

8 BY MR. EVANS: Yes, sir.

9 BY THE COURT: I'm going to give C-1, 2 and 3,  
10 and they are given as Instructions 1, 2, and 3.

11 (Off the record briefly during which Mr. Horan  
12 returned.)

13 BY THE COURT: The limiting instruction will  
14 be-- well, I take that back. We will just wait until we get it  
15 because you haven't seen it.

16 BY MR. HORAN: Look at these real quick. Some  
17 of these are a little bit different. We gave all four like one  
18 A, B, C and D.

19 BY MR. BILLY GILMORE: Surely, you are not  
20 bringing me any more at the last minute, are you?

21 BY MR. HORAN: No, these are just--

22 BY MR. BILLY GILMORE: --You know that is a  
23 violation of the rules.

24 BY MR. HORAN: What rule? 24 hours?

25 BY THE COURT: That is probably the most  
26 violated rule there is.

27 BY MR. BILLY GILMORE: Which one are you saying  
28 you added?

29 BY MR. HORAN: Huh? I didn't add. I just, we

1 gave y'all four, four elements. We have got S-1C.

2 BY MR. BILLY GILMORE: Oh, you added a--

3 BY MR. HORAN: --It is four of them. We had S-1  
4 and S-1A, B and C, and that is the one that we are tendering is  
5 C.

6 BY MR. JOHN GILMORE: We have already got a C.

7 BY MR. HORAN: I know; that's what I'm telling  
8 you. She took the-- the bottom thing had a bad-- yeah, that.

9 BY MR. BILLY GILMORE: You are taking S-1A and B  
10 out; is that what you're saying?

11 BY MR. HORAN: Right. We haven't tendered-- I  
12 mean we haven't filed any, so those are just proposed between  
13 us. So it doesn't really make any difference.

14 BY MR. BILLY GILMORE: All right, give me what  
15 you are saying you are proposing now. Don't confuse me.

16 BY MR. HORAN: Give them back. Here is the  
17 other one.

18 (Off the record briefly).

19 BY MR. EVANS: It just has "his reach" in one  
20 place, and then it goes to "her."

21 BY MR. HORAN: I told them to change that. I  
22 guess you want me to change that?

23 BY MR. EVANS: Well, we might have an English  
24 teacher on the jury.

25 BY MR. BILLY GILMORE: (To Mr. John Gilmore)  
26 Proof him on that one. I let him slide.

27 (Hands an instruction to Mr. John Gilmore; Off  
28 the record briefly).

29 BY MR. JOHN GILMORE: Here is a copy of ours.

1 There is a copy that is filed.

2 BY MR. BILLY GILMORE: This is the original copy  
3 I took out of the files.

4 BY MR. HORAN: These are originals?

5 BY MR. BILLY GILMORE: Yes. I took them out of  
6 the file.

7 (Mr. Gilmore hands Defense instructions to the  
8 Court. Off the record).

9 BY THE COURT: Where did they come out of? The  
10 gray, the blue book?

11 BY MR. JOHN GILMORE: They came out of the death  
12 penalty, capital-- I can't remember where I got them.

13 BY MR. EVANS: California law.

14 BY MR. BILLY GILMORE: I think it came from a  
15 seminar on capital murder. One that Judge Derrick gave us.

16 FURTHER ON INSTRUCTION C-4: BY MR. HORAN: He is going to  
17 flip these two paragraphs. I brought it in here so you could  
18 see if we need any other changes. I don't think we need that  
19 paragraph--that sentence in there.

20 BY THE COURT: Well, it doesn't hurt anything.  
21 I don't see any problem with leaving it in there. Take a look  
22 at that. (Hands an instruction to Defense Counsel) The  
23 paragraphs are in the wrong order. The bottom paragraph will  
24 be the first one.

25 BY MR. BILLY GILMORE: Do you want us to comment  
26 on this now?

27 BY THE COURT: If you are ready, yeah.

28 BY MR. EVANS: Let me glance at it.

29 (Counsel confer).

1 BY MR. BILLY GILMORE: What he is asking, Judge,  
2 is this is referring to S-1. Is that Court's--

3 BY MR. HORAN: --C--

4 BY MR. BILLY GILMORE: --that is Court 1?

5 BY THE COURT: Well, no. I will change that to  
6 what-- it will be Instruction number blank--

7 BY MR. HORAN: --right--

8 BY THE COURT: --which in this case will be 5.

9 BY MR. HORAN: Okay. Put that on there, Doug.

10 BY THE COURT: I will change it. We will just  
11 wait and change it on the other one.

12 (Mr. Walter Bleck enters chambers.)

13 BY THE COURT: Let me see it, Walter.

14 BY MR. EVANS: That is fine.

15 BY THE COURT: Oh, okay. Where is that one?

16 BY MR. BLECK: I just wanted to give these to  
17 Kevin so he could discuss--

18 BY THE COURT: --Okay, well, where is that one?

19 BY MR. HORAN: The one he is working on; have  
20 you got that one yet?

21 BY MR. BLECK: I haven't done it yet.

22 BY THE COURT: Okay, well, I am waiting on you.  
23 That's what I am waiting on right now.

24 BY MR. BLECK: Okay.

25 BY MR. HORAN: Look, put 5 in there. Look,  
26 where S-1 is put Instruction number 5.

27 BY MR. EVANS: He reversed--

28 BY MR. BLECK: That's right?

29 BY MR. HORAN: No, number 5, Instruction



1 number--

2 BY THE COURT: --Here, give it here. S-1 is  
3 the instruction that usually tracks the indictment?

4 BY MR. EVANS: Yes, sir.

5 BY MR. HORAN: Right.

6 BY THE COURT: Have you got any objection to  
7 this instruction?

8 BY MR. BILLY GILMORE: Your Honor, for the  
9 record we have made objection throughout the trial about the  
10 mention of the other crimes being committed, and, of course, we  
11 have had objection about the various other evidence being shown  
12 in the court. We don't want to give up that right. We still,  
13 we understand what the instruction says, and it goes to that,  
14 but we still, of course, keep our objection of the other bodies  
15 and the other things being brought in, other--

16 BY THE COURT: --The Court notes--

17 BY MR. BILLY GILMORE: --other scenes, whatever  
18 that was brought in. So we do not give up our right on that  
19 motion, but we understand this goes to that.

20 BY THE COURT: The Court notes that you do not  
21 give that up. My question, I guess, is since I have overruled  
22 that motion and I'm going to grant a limiting instruction, do  
23 you have any objection to this form as the limiting  
24 instruction?

25 BY MR. BILLY GILMORE: No, sir, not to that  
26 form.

27 BY THE COURT: Okay. That will be C-4.

28 BY MR. BLECK: Yes, sir.

29 BY THE COURT: And that will be, you can put C-4

1 on the bottom of it, and it's going to be Instruction number 4.

2 BY MR. BLECK: Okay.

3 (Mr. Bleck leaves chambers.)

4 BY THE COURT: All right. Where are the State's  
5 instructions?

6 BY MR. HORAN: I am looking at them right now,  
7 Judge, some of them. Which ones are y'all through looking at?

8 BY MR. BILLY GILMORE: I believe you just  
9 changed the spelling.

10 BY MR. HORAN: Right.

11 (Off the record for Counsel to confer among  
12 themselves.)

13 BY MR. HORAN: I better take them down there and  
14 file them and get copies of them.

15 BY MR. BILLY GILMORE: Just make a copy while  
16 you are down there.

17 BY MR. HORAN: I will do it.

18 BY THE COURT: Okay, well, what about the other  
19 State's instructions?

20 BY MR. HORAN: That's all our instructions  
21 except the one you are having changed--

22 BY THE COURT: --Well, where is S-1?

23 BY MR. HORAN: It's in there.

24 BY THE COURT: Not in this.

25 BY MR. HORAN: S-1C should be in the bottom  
26 left.

27 BY MR. EVANS: Elements.

28 BY THE COURT: Oh, okay.

29 BY MR. BILLY GILMORE: Late in the day, Judge.

1 BY THE COURT: Would you mind putting them in  
2 order?

3 BY MR. HORAN: Yes, sir.

4 BY THE COURT: Thank you.

5 (Mr. Bleck enters chambers with instruction that  
6 the Court reads and marks Given as Instruction number 4.)

7 (Off the record briefly)

8 INSTRUCTION S-1C: BY THE COURT: Okay, is there any  
9 objection to S-1C?

10 BY MR. BILLY GILMORE: All right. Let me make  
11 sure. No objection to S-1C.

12 BY THE COURT: That is given as Instruction  
13 number 5.

14 INSTRUCTION S-2: BY THE COURT: Okay, how about S-2?

15 BY MR. BILLY GILMORE: No objection to S-2.

16 BY THE COURT: Given as 6. Are y'all satisfied  
17 with 2?

18 BY MR. HORAN: Oh, yeah. We are satisfied with  
19 2.

20 INSTRUCTION S-3: BY THE COURT: How about S-3?

21 BY MR. BILLY GILMORE: Your Honor, in S-3 we are  
22 going to object because of the use of the gender "her" and  
23 "she" rather than "person" or "persons."

24 BY THE COURT: Okay. What is the problem that  
25 you have with that?

26 BY MR. BILLY GILMORE: Well, normally an  
27 instruction is more or less a generic type thing. It doesn't  
28 refer to the victim of that particular crime.

29 BY THE COURT: Well, of course, it may but it

1 should refer to that particular victim. I'm going to give it.  
2 This is 7?

3 BY MR. BILLY GILMORE: S-3.

4 BY MR. HORAN: What number is that?

5 BY MR. BILLY GILMORE: 3.

6 BY MR. HORAN: No--

7 BY THE COURT: --Given as 7.

8 INSTRUCTION S-4: BY THE COURT: How okay, how about  
9 S-4?

10 BY MR. BILLY GILMORE: Is that not a Court  
11 instruction?

12 BY THE COURT: Well, to tell you the truth, I  
13 don't have one like that.

14 BY MR. HORAN: It is one, but we always prepare  
15 it.

16 BY THE COURT: Yeah, it's a Court instruction,  
17 and none of these go in as Court instructions. They are going  
18 in as 1, 2, 3, 4, 5, 6, 7, 8.

19 BY MR. BILLY GILMORE: Well, I realize that, but  
20 you did not give one in your Court instructions?

21 BY THE COURT: No, I did not.

22 BY MR. BILLY GILMORE: That was my question.

23 BY THE COURT: No, I didn't.

24 BY MR. BILLY GILMORE: No objection.

25 BY THE COURT: Okay. 8.

26 (Instruction S-4 was given as Instruction 8.)

27 INSTRUCTION S-9: BY MR. EVANS: This is S-9.

28 BY MR. BILLY GILMORE: Your Honor, in S-9 which  
29 is the deliberate design instruction, at the very bottom it's

1 talking about the deliberate design to constitute the offense  
2 of capital murder or murder. We object to the "or murder"  
3 part.

4 BY MR. HORAN: All right.

5 BY THE COURT: Do y'all have any objection to  
6 that objection?

7 BY MR. HORAN: No.

8 BY THE COURT: Okay.

9 BY MR. HORAN: Do you want to just scratch that  
10 out?

11 BY THE COURT: Scratch it out.

12 BY MR. HORAN: No objection to it otherwise?

13 BY THE COURT: S-9 is given as amended, and it's  
14 Instruction number 9.

15 BY THE COURT: All right, the form of the  
16 verdict will be a "C" instruction. It will be at the, it will  
17 be the last instruction.

18 BY MR. EVANS: I bet she has still got the wrong  
19 thing on that.

20 BY THE COURT: I bet she has too; I just thought  
21 about that. Well, that's okay. Tell her I'm going to throw  
22 away her software.

23 BY MR. HORAN: Right there; "need not be formed"  
24 instead of "cannot be formed."

25 BY THE COURT: What?

26 BY MR. EVANS: That instruction is not right.

27 BY THE COURT: Which one?

28 BY MR. HORAN: S-9. It says, "A deliberate  
29 design cannot be formed at the very moment of the fatal act."

1 BY THE COURT: It does say that.

2 BY MR. EVANS: Need not be formed.

3 BY MR. HORAN: It says it later. I think that  
4 should be, it can be formed or need not be formed. It's in  
5 that book. It's in that capital murder book.

6 BY MR. EVANS: I'm going to run tell her that  
7 number while y'all-- you can go ahead. It's going to be "C"  
8 what, Your Honor, on the form?

9 BY THE COURT: C-5. But that goes at the bottom  
10 now, not up at the top like she has been putting it. Okay.

11 (Mr. Evans leaves chambers.)

12 INSTRUCTION NO. D-1: BY THE COURT: D-1 is a peremptory,  
13 and that is refused.

14 BY MR. BILLY GILMORE: I thought that was a good  
15 instruction, Judge.

16 BY THE COURT: It is a good instruction; I'm  
17 just not going to give it.

18 INSTRUCTION NO. D-2: BY THE COURT: Okay, D-2 is given in  
19 C-1, so I refuse it as being repetitious.

20 BY MR. HORAN: It's also on a comment on the  
21 weight of the testimony.

22 INSTRUCTION NO. D-3: BY THE COURT: I have given D-3 --  
23 well, except for the part about the exclusion of every other  
24 reasonable hypothesis consistent with innocence. We might as  
25 well cross that bridge now. This is not a circumstantial  
26 case.

27 BY MR. BILLY GILMORE: Judge, we feel like it  
28 is.

29 BY THE COURT: Well, I know you feel like it is,

1 but it's not one because you have two people that have  
2 testified that he confessed to them. And that takes it out of  
3 being circumstantial. It's a direct evidence case. Now if you  
4 have got some authority that says otherwise, I will look at  
5 it.

6 BY MR. BILLY GILMORE: Well, of course, that is  
7 disputed evidence; I realize that but--

8 BY THE COURT: Of course, that is not the test  
9 as to whether it's disputed. The jury is going to have to  
10 resolve that. The test is whether that makes it a direct case  
11 rather than a circumstantial case. If you have a case or cases  
12 that will show me that I am incorrect on that, I will be more  
13 than happy to look at them.

14 BY MR. BILLY GILMORE: We don't have it with us,  
15 Your Honor.

16 BY THE COURT: Okay. Has the State got any  
17 comment they want to make on that?

18 BY MR. HORAN: No, sir. The case law is clear.

19 BY THE COURT: All right, therefore, D-3, the  
20 circumstantial part of D-3 makes D-3 where I'm not going to  
21 give it. But you can't-- there is no point in amending the  
22 rest of it. Even as amended I'm not going to give it because I  
23 have already given it. It's refused.

24 INSTRUCTION NO. D-4: BY MR. HORAN: The State would  
25 object to D-4 on the same grounds as the Court just ruled just  
26 then.

27 BY THE COURT: Right. D-4 is circumstantial.

28 INSTRUCTION NO. D-5: BY MR. HORAN: Your Honor, the D-5  
29 instruction is a comment on reasonable doubt, what that

1 standard would or and would not be. It makes good argument--

2 BY THE COURT: --Well, those sentiments are  
3 contained in C-1 which I have given, so I refuse it as  
4 repetitious.

5 INSTRUCTION NO. D-6: BY THE COURT: D-6 is covered in  
6 C-1.

7 BY MR. BILLY GILMORE: Your Honor, I believe in  
8 D-6 we maybe go into a little more detail than the Court's  
9 instruction. We would like to have it included.

10 BY MR. HORAN: It's a lot of argument in there,  
11 but that is good argument -- well, I don't say it's good  
12 argument. It's argument they can make, but C-1 tells them that  
13 they are to be the sole judges of the witnesses.

14 BY MR. BILLY GILMORE: I think D-6 goes a little  
15 further.

16 BY THE COURT: I think you have got this part  
17 about two other or more persons thing that might -- have you  
18 got any objection to it?

19 BY MR. HORAN: Yes, sir. They can argue that.  
20 That is good argument, but that is not the law. They may see  
21 or hear it differently and--

22 BY THE COURT: --I have covered that in C-1. It  
23 is refused as repetitious.

24 INSTRUCTION NO. D-7: BY THE COURT: What do you say to  
25 D-7?

26 BY MR. HORAN: It's just a comment on the  
27 evidence, and they have got-- they can argue that, but there is  
28 no law that says that the Court has to tell them that they have  
29 to weigh the credibility or believability of any piece of



1 evidence.

2 BY THE COURT: And C-1 tells them what to do in  
3 that regard. Refused.

4 INSTRUCTION NO. D-8: BY THE COURT: What about the  
5 expert?

6 (Mr. Evans enters chambers.)

7 BY MR. HORAN: It tells them to disregard the  
8 testimony at the end. I don't know that.

9 BY THE COURT: I'm going to give it.

10 BY MR. HORAN: Judge, if you are going to give  
11 it, it's all right, but the little things under the jury  
12 instruction thing, I don't think those are--

13 BY THE COURT: --Like where, like where it says,  
14 "Expert Testimony"?

15 BY MR. HORAN: Right.

16 BY THE COURT: Yeah, I have got a problem with  
17 that too.

18 BY MR. BILLY GILMORE: I have no problem with  
19 you scratching it out.

20 BY THE COURT: The reason I have a problem with  
21 it is that it highlights one instruction over another and I--  
22 now if you want it in there, I mean if you want to make an  
23 issue in that, then I'm just going to refuse it if it has got  
24 to have that in there. But if you will accept it as amended  
25 without that, then I am going to give that instruction.

26 BY MR. BILLY GILMORE: We will accept it as  
27 amended. We don't have a problem.

28 BY MR. HORAN: I don't think it's supposed to  
29 have the Montgomery County cause number on there but--

1 BY MR. JOHN GILMORE: --Well, the rules say--

2 BY THE COURT: --It won't make any difference.  
3 It doesn't matter.

4 (Instruction D-8 was given as Instruction 10.)

5 INSTRUCTION NO. D-9: BY MR. HORAN: D-9 is improper. You  
6 don't necessarily have to use the same guidelines on any  
7 witness. It depends on what the other witnesses testified to.

8 BY MR. BILLY GILMORE: It doesn't say any  
9 particular witness. It says in evaluating the testimony of any  
10 witness; use the same guidelines throughout.

11 BY MR. EVANS: But they don't have to give  
12 weight to any witness' testimony if they don't want to.

13 BY THE COURT: Other than expert testimony, I  
14 don't know that anybody is entitled to an instruction that  
15 singles out a particular class of witnesses.

16 BY MR. EVANS: They are not.

17 BY THE COURT: That is refused, D-9.

18 INSTRUCTION NO. D-10: BY THE COURT: D-10, do you want to  
19 withdraw? He testified.

20 BY MR. BILLY GILMORE: Yes, sir. We will  
21 withdraw D-10.

22 INSTRUCTION NO. D-11: BY MR. HORAN: It is covered by  
23 what was S-1C which is now Instruction 4, I believe. It is  
24 already in there. It is repetitious.

25 BY THE COURT: It is. D-11 is refused as  
26 repetitious.

27 INSTRUCTION NO. D-12: BY MR. HORAN: There is absolutely  
28 no case law that authorizes an impeachment instruction.

29 BY THE COURT: Have y'all got any?

1 BY MR. BILLY GILMORE: Well, I don't know of any  
2 case law against it, Your Honor.

3 BY THE COURT: (Court laughs.) That is like  
4 what John Whitten said when they sued Charleston over there in  
5 that county over there he represented. They sued them because  
6 they were charging a turn key fee over there, and John was  
7 Board of Supervisors. They said well, there was absolutely no  
8 authority for that. John says, no, there wasn't any authority  
9 said I couldn't do it either. But that didn't work then and  
10 not going to work now.

11 BY MR. BILLY GILMORE: The Court has already  
12 ruled on that turn key thing down on the coast anyway, so that  
13 issue is over with.

14 BY THE COURT: Okay, I refused D-12.

15 INSTRUCTION NO. D-13: BY MR. HORAN: I object to 13.

16 BY MR. EVANS: It is trying to single out  
17 different individual's testimony.

18 BY THE COURT: Well, I have just said, I think I  
19 have already ruled on that.

20 (Instruction D-13 was refused.)

21 INSTRUCTION NO. D-14: BY MR. HORAN: D-14 is covered by  
22 two instructions tendered by the State. We cover the elements  
23 of armed robbery. Did you look at that instruction on S-9  
24 deal?

25 BY THE COURT: Yeah.

26 BY MR. BILLY GILMORE: Your Honor, on D-14, I  
27 think we are entitled to that. We go into more detail where  
28 the jury have a right to read it and know what the elements  
29 are. I wouldn't imagine that a normal person off the street

1 would know any elements of any crime, and I feel like this goes  
2 into more detail where it will explain to them where they would  
3 understand the elements of the crime.

4 BY THE COURT: Okay. It's refused as being  
5 repetitious. Okay.

6 BY MR. HORAN: Your Honor, look at that  
7 instruction number 9 and see if that's the law, make sure  
8 that's the law. That is an instruction that is talked about  
9 pretty regular.

10 INSTRUCTION NO. C-4 (SHOULD HAVE BEEN STYLED AS C-5):

11 BY THE COURT: Here is what I do. I'm giving  
12 C-4 as instruction number 11; is that right?

13 BY THE COURT REPORTER: Yes, sir.

14 (NOTE: This was later changed to Instruction  
15 12 when another instruction was added.)

16 BY THE COURT: All right, it's the form of the  
17 verdict. My procedure is that I mark the instruction as  
18 given. It's going to be attached to the other instructions. I  
19 will attach the form of the verdict which is a place where they  
20 can check it rather than write out the verdict.

21 BY MR. BILLY GILMORE: Your standard form you  
22 always give?

23 BY THE COURT: Yeah, the same one and then we  
24 are going-- and it will be attached with a paper clip so they  
25 can remove it and do it and submit it. Okay?

26 BY MR. BILLY GILMORE: Yes, sir.

27 BY THE COURT: All right, as soon as y'all get  
28 S-9 in, I guess we are ready.

29 BY MR. HORAN: Yes, sir.

1 BY THE COURT: 5 o'clock.

2 BY MR. BILLY GILMORE: Don't say that. Kevin  
3 will start clicking.

4 BY MR. EVANS: If we got the arguments over with  
5 today, they could either start deliberating first thing in the  
6 morning or--

7 BY THE COURT: --How about we make, well, how  
8 about we make the arguments and then come back and let them  
9 deliberate, start deliberating at 9 o'clock or 8 o'clock if  
10 they would want to.

11 BY MR. BILLY GILMORE: Judge, I had rather wait  
12 and do the final arguments in the morning.

13 BY THE COURT: Why?

14 BY MR. BILLY GILMORE: Where we can get our  
15 notes together. It has been a long week although it has been  
16 four days. I think to have the time to put my notes in order.

17 BY MR. HORAN: That is a proper instruction,  
18 Judge.

19 BY THE COURT: S-9 is okay?

20 BY MR. HORAN: Yes, sir.

21 BY THE COURT: Okay.

22 BY MR. HORAN: What they are saying is-- it  
23 clears it up later on, that in no instantaneous, it's no way to  
24 prove instantaneous.

25 (As stated earlier, Instruction S-9 was given as  
26 Instruction 9.)

27 BY THE COURT: Well, of course, y'all know what  
28 I would prefer. I would prefer that everybody argued and--

29 BY MR. EVANS: The State is ready to go ahead

1 and argue.

2 BY THE COURT: I know.

3 BY MR. EVANS: I'm about as familiar with the  
4 case today as I am going to ever be.

5 BY MR. HORAN: I can't figure out why y'all  
6 would want to wait any longer-- I mean why y'all would want to  
7 wait more myself.

8 BY MR. BILLY GILMORE: You are talking about 7  
9 o'clock if we go through the arguments today. I just prefer  
10 doing it first thing in the morning.

11 BY MR. EVANS: 6:30.

12 BY MR. BILLY GILMORE: Tomorrow afternoon?

13 BY MR. EVANS: No, 6:30 if we went through them.

14 BY THE COURT: It will be closer to 7:00.

15 BY MR. BILLY GILMORE: Oh, I thought you were  
16 talking about in the morning, we will start at 6:30.

17 BY MR. EVANS: No. I would rather go all night  
18 than start at 6:30 in the morning.

19 BY THE COURT: You don't have to worry about  
20 that.

21 BY MR. EVANS: I'm not a morning person.

22 BY MR. BILLY GILMORE: I'm not either.

23 BY MR. HORAN: Do you have any reason not to  
24 argue tonight at 5 o'clock? Any particular reason?

25 BY MR. BILLY GILMORE: Lateness of the hour--

26 BY THE COURT: --Well, if this was-- I tell you  
27 the truth. If this was a situation where we were going, where  
28 this would wind this up, then it would be different, but we  
29 have got another trial to go on this. So let's argue it

1 tonight. And then I'm going to let them deliberate in the  
2 morning. Okay?

3 BY MR. EVANS: Yes, sir.

4 BY THE COURT: 45 minutes to a side.

5 BY THE COURT REPORTER: I need time to go  
6 through the exhibits, make sure I have got them all, the ones  
7 in evidence and everything.

8 BY THE COURT: How long do you think that will  
9 take?

10 BY THE COURT REPORTER: Ten minutes.

11 BY THE COURT: Okay.

12 (FOLLOWING A RECESS FOR THE REPORTER TO CHECK  
13 THE EXHIBITS, THE COURT REPORTER WAS AGAIN CALLED  
14 BACK TO CHAMBERS OUT OF THE PRESENCE OF THE JURY BUT  
15 WITH ALL COUNSEL AND THE DEFENDANT BEING PRESENT FOR  
16 THE FOLLOWING:)

17 INSTRUCTION NO. S-10: BY THE COURT: Okay. You  
18 have got to renumber for me when you go out there. This is--

19 BY MR. HORAN: --You could give it an "A"  
20 instead of-- you could give it behind the form.

21 BY THE COURT: The form is 11; isn't that right?

22 BY THE COURT REPORTER: Yes, sir.

23 BY THE COURT: Okay, this is going to be  
24 Instruction number 11; the form will be 12. This is an alibi  
25 instruction that I am giving.

26 BY MR. HORAN: That is going to be 11?

27 BY THE COURT: That is going to be 11, and the  
28 form of the verdict is 12.

29 BY MR. BILLY GILMORE: It is marked 12, Judge.

1                   **BY THE COURT:** Well, I don't care.

2                   **BY MR. BILLY GILMORE:** That's the reason they  
3 make erasers on pencils.

4                   **BY THE COURT:** (To the Court Reporter) Okay, if  
5 you would just mark the other one 12 for me. Okay.

6                   (Instruction S-10 was given as Instruction 11.)

7                   (WHEREUPON, THE COURT, ALL COUNSEL, THE COURT  
8 REPORTER, AND THE DEFENDANT RETURNED TO OPEN COURT IN  
9 THE PRESENCE OF THE JURY AT 5:20 P.M. FOR THE  
10 FOLLOWING:)

11                   **BY THE COURT:** Ladies and gentlemen, I have  
12 considered the instructions, and I'm going to give  
13 them to you here in just a minute. These will be the  
14 instructions on the law that you will be entitled to  
15 take with you to the jury room and that you must  
16 apply to the facts as you see them. Then after I  
17 read these instructions to you, I'm going, the  
18 lawyers will argue their case to you. I'm going to  
19 let them argue it tonight. I'm not going to let you  
20 deliberate tonight because I imagine the arguments  
21 are going to take at least an hour and maybe an hour  
22 and a half to complete. And then at that point in  
23 time y'all would have to eat before you deliberated  
24 and then you would deliberate later, and it would put  
25 us late on into the night. And we are ahead of  
26 schedule, so there is not going to be the necessity  
27 to do that. So I'm going to let them argue; I'm not  
28 going to let you deliberate on your verdict, but we  
29 will start with your deliberations first thing in the



1 morning. Okay.

2 **BY THE COURT:**

3 "You have heard all of the testimony and received  
4 the evidence and will hear the arguments of counsel shortly. I  
5 will now instruct you as to the rules of law which you will  
6 apply to this evidence in reaching your verdict.

7 When you took your place in the jury box, you took an  
8 oath that you would follow and apply these rules to the  
9 evidence in reaching your verdict in this case. It is,  
10 therefore, your duty as jurors to follow the law which I shall  
11 now state to you.

12 You are not to be concerned with the wisdom of any  
13 rule of law. Regardless of any opinion you may have as to what  
14 the law ought to be, it would be a violation of your sworn duty  
15 to base your verdict upon any other view of law than that given  
16 in these instructions.

17 You are not to single out one instruction alone as  
18 stating the law, but you must consider these instructions as a  
19 whole.

20 It is your exclusive province to determine the facts  
21 in this case and to consider and weigh the evidence for that  
22 purpose. The authority thus vested in you is not an arbitrary  
23 power, but must be exercised with sincere judgment, sound  
24 discretion, and in accordance with the rules of law.

25 Both parties have a right to expect that you will  
26 conscientiously consider and weigh the evidence and apply the  
27 law of the case.

28 It is your duty to determine the facts and to  
29 determine them from the evidence produced in open court. You

1 are to apply the law to the facts and in this way decide the  
2 case. You should not be influenced by bias, sympathy, or  
3 prejudice. Your verdict should be based on the evidence and  
4 not upon speculation, guesswork or conjecture.

5 You are required and expected to use your good common  
6 sense and sound honest judgment in considering and weighing the  
7 testimony of each witness who has testified in this case.

8 The evidence which you are to consider consists of  
9 the testimony and statements of the witnesses and exhibits  
10 offered and received. You are also permitted to draw such  
11 reasonable inferences from the evidence as seem justified in  
12 light of your own experience.

13 Arguments, statements and remarks of counsel are  
14 intended to help you understand the evidence and apply the law,  
15 but are not evidence. If any argument, statement or remark has  
16 no basis in the evidence, then you should disregard that  
17 argument, statement or remark.

18 The production of evidence in court is governed by  
19 rules of law. From time to time during the time trial it has  
20 been my duty as Judge to rule on the admissibility of  
21 evidence. You must not concern yourselves with the reasons for  
22 my rulings since they are controlled and governed by the rules  
23 of law. You should not infer from my rulings on these motions  
24 or objections to the evidence that I have any opinion on the  
25 merits favoring one side or the other. You should not  
26 speculate as to possible answers to questions which I did not  
27 require to be answered. Further, you should not draw any  
28 inferences from the content of these questions.

29 You are to disregard all evidence which I excluded

1 from consideration during the course of the trial.

2 If in stating the law to you, I repeat any rule,  
3 direction or idea, or if I state the same in varying ways, no  
4 emphasis is intended and you must not draw any inference  
5 therefrom. The order in which these instructions are given has  
6 no significance as to their relative importance.

7 The law presumes every person charged with the  
8 commission of a crime to be innocent. This presumption places  
9 upon the State the burden of proving the Defendant guilty of  
10 every material element of the crime with which the Defendant is  
11 charged. Before you can return a verdict of guilty, the State  
12 must prove to your satisfaction beyond a reasonable doubt that  
13 the Defendant is guilty. The presumption of innocence attends  
14 the Defendant throughout the trial and prevails at its close  
15 unless overcome by evidence which satisfies the jury of the  
16 Defendant's guilt beyond a reasonable doubt. The Defendant is  
17 not required to prove his or her innocence.

18 The verdict of the jury must represent the considered  
19 judgment of each juror. In order to return a verdict, it will  
20 be necessary that each juror agree. In other words, all twelve  
21 jurors must agree before returning a verdict in this case. It  
22 is your sworn duty as jurors to consult with one another and to  
23 deliberate in view of reaching an agreement, if you can do so  
24 without violence to your individual judgment. Each of you must  
25 decide the case for yourself, but do so only after an impartial  
26 consideration of the evidence with your fellow jurors. In the  
27 course of your deliberations, do not hesitate to re-examine  
28 your own views and change your opinion, if convinced it is  
29 erroneous, but do not surrender your honest convictions as to

1 the weight or effect of evidence solely because of the opinion  
2 of your fellow jurors or for the mere purpose of returning a  
3 verdict.

4 Evidence of a prior criminal activity on the part of  
5 one criminally accused is inadmissible where the prior offense  
6 has not resulted in a conviction, except, however, that the  
7 State has a legitimate interest in telling a rational and  
8 coherent story of what happened and where substantially  
9 necessary to present to the jury the complete story of the  
10 crime, evidence or testimony may be given even though it may  
11 reveal or suggest other crimes.

12 In this case, evidence has been offered by the State  
13 that the Defendant may have committed crimes other than the  
14 capital murder of Bertha Tardy. The Defendant is on trial for  
15 the offense of the capital murder of Bertha Tardy and that  
16 offense only. You cannot convict the Defendant in this case  
17 unless the State has proven beyond a reasonable doubt each and  
18 every element of capital murder as set out in Instruction  
19 number 5.

20 If you believe from all the evidence in this case  
21 beyond a reasonable doubt that the Defendant, Curtis Giovanni  
22 Flowers, did on or about July the 16th, 1996, in Montgomery  
23 County, Mississippi, willfully, unlawfully, feloniously, either  
24 with or without deliberate design, then and there kill and  
25 murder Bertha Tardy, a human being, without authority of law  
26 when engaged in the commission of the crime of armed robbery,  
27 then, the Defendant is guilty of capital murder, and it is your  
28 sworn duty to find the Defendant guilty of capital murder.

29 If the State has failed to prove any one or more of

1 these elements beyond a reasonable doubt, then you shall find  
2 the Defendant not guilty of capital murder.

3 If you believe from all the evidence in this case  
4 beyond a reasonable doubt that the Defendant, Curtis Giovanni  
5 Flowers, did in Montgomery County, Mississippi, on or about  
6 July 16, 1996, willfully, unlawfully, and feloniously, with the  
7 felonious intent to permanently deprive the owner thereof, did  
8 take, steal, and carry away the personal property of Bertha  
9 Tardy d/b/a Tardy Furniture Store, from the person, from the  
10 presence, and against the will of Bertha Tardy by violence to  
11 her person with a deadly weapon, then the same would constitute  
12 armed robbery.

13 A thing is in the presence of a person, in respect to  
14 robbery, which is so within her reach, inspection, observation,  
15 or control that she could, if not overcome with violence or  
16 prevented by fear, retain her possession of it.

17 This phase of the trial deals only with the question  
18 of the guilt or innocence of the Defendant, Curtis Giovanni  
19 Flowers. In the event that you find the Defendant guilty of  
20 capital murder, you will then and only then, after being  
21 further instructed by the Court in the second phase of this  
22 trial, consider the appropriate sentence to be imposed.

23 The Court further instructs the jury that deliberate  
24 design as used elsewhere in these instructions means intent to  
25 kill without authority of law and not being legally justifiable  
26 or legally excusable.

27 A deliberate design cannot be formed at the very  
28 moment of the fatal act; however, the deliberate design need  
29 not exist in the mind of the Defendant for any definite time,

1 not for hours, days, or even minutes, but if there is a  
2 deliberate design, and it exists in the mind of the Defendant  
3 but for an instant before the fatal act, this is sufficient  
4 deliberate design to constitute the offense of capital murder.

5 The law permits evidence of certain persons who are  
6 termed expert. Experts may testify to their opinions derived  
7 from their knowledge of particular matters. However, the  
8 ultimate weight to be given to expert testimony is a question  
9 to be determined by you. The testimony of any expert, like  
10 that of any other witness, is to be received by you and given  
11 such weight only as you think it is properly entitled to  
12 receive. You are not bound by the opinion testimony of any  
13 witness, expert or otherwise.

14 "Alibi" means elsewhere or in another place. Alibi  
15 is a legal and proper defense in the law. The Defendant is not  
16 required to establish the truth of his alibi to your  
17 satisfaction, but if the evidence or lack of evidence in this  
18 case raises in the minds of the jury a reasonable doubt as to  
19 whether the Defendant was present and committed the crime, then  
20 you must give him the benefit of the doubt and acquit him.

21 Your verdict may be in the following forms and must  
22 be plainly marked upon the sheet with which you will be  
23 provided, and your verdicts need not be signed.

24 If you find the Defendant, Curtis Giovanni Flowers,  
25 guilty of capital murder, then the form of your verdict shall  
26 be: 'We, the jury, find the Defendant, Curtis Giovanni  
27 Flowers, guilty of Capital Murder as charged in the  
28 indictment.'

29 If you find the Defendant, Curtis Giovanni Flowers,



1 not guilty, the form of your verdict shall be: 'We, the jury,  
2 find the Defendant, Curtis Giovanni Flowers, not guilty.'"

3 There is attached to these instructions a form that  
4 has both of those verdicts on it. When you reach, after your  
5 deliberations when you reach a verdict, you can just simply  
6 check one of them.

7 45 minutes to the side. Mr. Evans, I will call you  
8 at 22 and a half.

9 BY MR. EVANS: Yes, sir.

10 BY THE COURT: How about I just call you at 20?

11 BY MR. EVANS: Will be fine, Your Honor. May I  
12 turn the podium a little bit, Your Honor?

13 BY THE COURT: Yes, sir.

14 FINAL ARGUMENT BY MR. EVANS:

15 Ladies and gentlemen, this is the formal part of the  
16 trial that we have been telling you about every since we  
17 started. In opening statements we told you what we expected to  
18 prove to you. We did that. We went through the evidence,  
19 through the testimony. I'm going to briefly go back through  
20 that for you, but what it boils down to is you have heard the  
21 evidence. The Court has instructed you on the law, and at this  
22 point it's going to be up to you, I guess in the morning the  
23 way the Judge has determined, to deliberate on this case.

24 This is a capital murder case as we have told you  
25 from the beginning. This particular trial is for the murder of  
26 Bertha Tardy. Even though there were others killed there, that  
27 is the trial that we are trying here before you.

28 In this particular trial, we showed you that on July  
29 the 16th, 1996, a crime was committed in the City of Winona,

1 Mississippi. Bertha Tardy was at work at her store as she  
2 always was. She had other people that were working there with  
3 her. Carmen Rigby was there, the bookkeeper; Robert Golden was  
4 in his first day of work; BoBo Stewart was in his second day of  
5 work, four people that were at work minding their own business  
6 just as anyone would be when they go to work, none of them  
7 expecting that that would be the last day that they lived, all  
8 of them performing their normal operations. Carmen Rigby had  
9 gone to the bank to make a deposit. She had gone to the post  
10 office. None of these people suspected that there would be any  
11 problem that day just as an average person when they go to  
12 work, doesn't expect problems. But that is not true in this  
13 case, and we know that now.

14 We know that because at about 10 o'clock that  
15 morning, Sam Jones came in to show these boys how to haul  
16 furniture. Two folks that had been on the job such a short  
17 period of time, they didn't even know how to load and haul  
18 furniture. Sam had been an employee for approximately 50  
19 years. He was going to come in and show them. He had actually  
20 helped hire Robert Golden. Robert had showed up for his first  
21 day at work.

22 What happens? Sam walks in, just like he normally  
23 would, looking for the folks there, looking for Ms. Tardy that  
24 had called him; walks through the store, doesn't see anybody;  
25 walks on closer toward the back, and he hears somebody  
26 gurgling. He doesn't know what that is. He gets to looking  
27 around, and on the floor he looks down, and he sees BoBo  
28 Stewart. He sees him there trying to breathe. He looks on  
29 over to the side. He sees Carmen Rigby laying down there on



1 the floor. In front of her he sees Robert Golden. And I can  
2 imagine he was shocked so bad he didn't know what was going on  
3 at that point. Here right at his feet were three people laying  
4 in pools of blood.

5 He looks around. He looks down the aisle. And there  
6 Bertha Tardy is where she was trying to go to the back of the  
7 store. She is laying in the floor dead in a pool of blood. I  
8 can only imagine what was going through his mind. He tries to  
9 make sure who was alive and who was dead, says that it is  
10 obvious that everybody there is dead except for BoBo. He goes  
11 up the street to Coast to Coast. And I am sure he was  
12 panicked, asked them to call the police.

13 The Police Chief comes to the scene, and I am sure  
14 that the Police Chief had never seen a scene like this before.  
15 He goes in. He sees these bodies laying everywhere. He sees  
16 blood everywhere. He is in such shock that the only thing he  
17 knows to do at that point is to pull his weapon out and back  
18 out of the store because he doesn't know whether whoever  
19 committed this horrible crime is still in there or not. He  
20 gets outside. He calls for an ambulance because he did notice  
21 that BoBo was still breathing, and he starts calling for  
22 different help. He calls for backup from local police  
23 officers. He calls the District Attorney's Office and asked us  
24 to come help. He calls the Highway Patrol and asks for them to  
25 send investigators, and also the state Crime Lab is called in,  
26 everybody trying to figure out what happened.

27 Almost immediately it's brought to everyone's  
28 attention that Curtis Flowers had been an employee there, that  
29 Curtis Flowers had been let go because of some damage that he

1 had done there. The check that was made payable to Curtis  
2 Flowers was found still there. He is the suspect almost  
3 immediately in this case.

4 The Crime Lab attempts to recover all the evidence  
5 that they can at the scene. They take pictures so that a jury  
6 at some point in time will be able to see what happened in that  
7 store, pictures that no one should ever have to see. The  
8 evidence is recovered from the scene so that we might try to  
9 start putting a case together, again so that a jury at some  
10 point in time will be able to hear the evidence against whoever  
11 committed this horrible crime.

12 Then what it boils down to, we get to a trial and  
13 show all this evidence to you. We show you that on the same  
14 day that this crime is committed Curtis Flowers is picked up  
15 almost immediately. I think some very good detective work was  
16 used to allow the officers to pick him up that quick. If he  
17 hadn't been picked up that quick, we wouldn't have had some of  
18 the evidence that you had here to see.

19 As you heard Joe Andrews with the Crime Lab testify,  
20 it's very important on gunshot residue that a person be picked  
21 up quick enough so that that evidence isn't gone. That  
22 evidence doesn't last long. As he told you, he expects in  
23 three to four hours time most of the evidence would already be  
24 gone because it just doesn't stay there.

25 The officers did pick him up. The officers did think  
26 about the things that they needed to do. This was not a  
27 haphazard investigation. This was an investigation where  
28 everyone worked together. Every agency involved worked hand in  
29 hand to make sure that everything was preserved so that you,

1 when you ended up hearing this case, could see every piece of  
2 physical evidence. A gunshot residue test was used for the  
3 sole purpose, and Curtis Flowers was the suspect in having shot  
4 four people.

5 Jack Matthews, who has been with the Highway Patrol  
6 for years, who is a trained investigator with the Highway  
7 Patrol, took a gunshot residue test; he opened it; he made sure  
8 he followed the directions to protect the integrity of the  
9 test. He washed his hands. He put on rubber gloves just to  
10 make sure that nothing contaminated the test, and he properly  
11 recovered the evidence, evidence that went to the state Crime  
12 Lab, evidence that Joe Andrews was able to come in here and  
13 with this kit tell you that Curtis Flowers had gunshot residue  
14 on his hand within a matter of a few hours after he had killed  
15 these people, positive evidence.

16 You heard Defense Counsel try every way they could to  
17 cross Joe Andrews up. Well, couldn't it have been from car  
18 batteries? Couldn't it have been from fireworks? Couldn't it  
19 have been from spark plugs? No. The element, the particle  
20 that he recovered had to have all three elements of gunshot  
21 residue before he can make a positive test. And no other  
22 particle known to man in the universe has all three of those  
23 elements besides gunshot residue. You cannot find it in car  
24 batteries. You cannot find it in spark plugs. You cannot find  
25 it in fireworks. He said that that came from gunshot residue.  
26 So no matter how hard Defense Counsel tried to attack him on  
27 that, he came back positive he had gunshot residue on his  
28 hand. And where did he have it? He had it on the back of his  
29 right hand which Joe Andrews told you if a person holds a gun,

1 an automatic pistol in their hand and fires it, that is the  
2 part of the hand that you most likely expect to find gunshot  
3 residue. That's where it was.

4 This is one piece of evidence that this jury would  
5 have never seen if the officers hadn't done their job as  
6 quickly and as efficiently as they did. Another part that this  
7 jury might never have seen if this had been a haphazard  
8 investigation of the crime scene, you might have had officers  
9 and ambulance personnel tracking evidence in the scene. But  
10 the first officer in the scene, Chief Hargrove, saw the bloody  
11 tennis shoe tracks, and he protected these tracks so that no  
12 one would tamper with them, so that no one would step on them.  
13 And because he protected these prints, you had them in court to  
14 look at.

15 You have heard how these prints were going from the  
16 pool of blood next to where BoBo Stewart was laying. You have  
17 heard how these prints were thicker close to the body, and as  
18 the person walked further away, they tended to get lighter and  
19 lighter. These are very significant. These prove that the  
20 person that was in there was wearing Fila Grant Hill tennis  
21 shoes, the same type shoes as the box that was recovered from  
22 the house that Curtis was living in. You have heard witnesses  
23 testify that that was the kind of shoes he wore even though he  
24 said it wasn't.

25 Another thing that I think was very important; Curtis  
26 Flowers was interviewed almost immediately. And he thought he  
27 was smart enough to outsmart the officers, and he thought he  
28 was smart enough to outsmart you. But he was caught in too  
29 many lies. He gave different times of when he was at locations

1 to try to make up an alibi for where he was. And every time he  
2 would think about his alibi, he would figure out that wasn't  
3 the time he needed it to be, so he would change it. He changed  
4 what time he went to his sister's house five different times.  
5 It ranged anywhere from 9:30 to 10 o'clock to 11 o'clock to 12  
6 o'clock. He couldn't figure out where he wanted to be. The  
7 only thing he knew he didn't want y'all to know first, that he  
8 was by Doyle's car stealing his gun. Why didn't he want you to  
9 know that?

10 But Katherine Snow saw him. Katherine Snow had known  
11 him for years, but she couldn't think of his name. And as she  
12 testified, as soon as she saw the photo lineup, she was able to  
13 point him out. And you saw she had absolutely no problem in  
14 the courtroom saying that is the person right there; that  
15 person is the one that was leaning against the car.

16 This is important for several different reasons. One  
17 reason it's important is it puts him next to the gun that was  
18 used. Another reason it's important is all of these places he  
19 was seen proved that he lied. He said he was never on the east  
20 side of 51. All of these places were on the east side of 51.  
21 He was seen in several different locations on that side.

22 Porky Collins saw a person, and I think Porky was a  
23 very honest witness. He wasn't going to come up here and say  
24 that's the person I saw because he wasn't absolutely positive.  
25 But what did he tell you? He said the person I saw looks like  
26 that man over there, but at the time I saw him he didn't look  
27 quite as heavy. Of course, we are talking about over a year  
28 later, and he didn't have glasses. Well, it's so strange that  
29 Curtis didn't wear glasses during that time period. Looked

1 just like him.

2 And what in the world did we have to back him up? We  
3 had witnesses like Ms. Fleming that saw him walking toward  
4 town. Ms. Jeanette Fleming dropped her car off to leave it to  
5 have a windshield put in. We are not talking about somebody  
6 that said, well, it looked like him. We are talking about  
7 just about all of these witnesses know him, have known him all  
8 his life. She had a conversation with him after she dropped  
9 her car off. He was walking toward town. He made the comment  
10 to her, "Hey, good looking," and they talked, and he walked on  
11 toward town. She wasn't mistaken. They tried to confuse her  
12 about what day she dropped her car off. She knew what day she  
13 dropped her car off. She saw him walking toward the store.

14 Probably the most important one witness, and it's no  
15 way to really say one witness is that important because they  
16 are all important, but the one that I would rank as the most  
17 important is Clemmie Fleming. She was the girl that worked at  
18 the hospital that was pregnant at the time. And what did she  
19 tell you she saw? She saw the Defendant running from the  
20 store. Of course, he said he wasn't on that side of the  
21 highway, and she has known him practically all her life - not  
22 jogging, running wide open.

23 Now the only thing that is uncertain to me at this  
24 point is was he still in the store the first time that Sam  
25 Jones went in there; did he run out at that point, or had he  
26 already run out, and that is not important. All we have to  
27 prove to you are the elements of the case, and we have done, in  
28 my opinion, way more than that, ladies and gentlemen.

29 We have proven to you that he had a motive to start



1 with. He was mad. He was mad because he had been let go, and  
2 he wanted money. He went down there with a gun to get the  
3 money, and if a person goes in with a gun to take money away  
4 from somebody, that is armed robbery. And if a person is  
5 killed during that armed robbery, that is capital murder. It's  
6 that simple. That is why this case is before you on the charge  
7 of capital murder. This Defendant went to the store with a  
8 gun, took money and killed people and ran from the scene.

9 I'm not sure what his alibi is at this point he has  
10 given so many different versions. I assume what he is trying  
11 to say is that he was at home at the time. I don't know. The  
12 other witnesses that testified, I guess as alibi witnesses; I  
13 guess that's what you would call them; they weren't an alibi.  
14 All they did was said that they saw him somewhere around 9  
15 o'clock. That is not an alibi. We know that the crimes  
16 occurred around 10 o'clock at the time, around the time that he  
17 was seen running away from the store.

18 He also tried to lie to you on several other things.  
19 Some didn't even make any sense, no reason to lie, but he  
20 wanted to lie to you to try to confuse the jury. He even tried  
21 to say that the Highway Patrol investigators were lying, that  
22 they actually took two gunshot residue tests. That's why we  
23 brought Wayne Miller back in to explain to you no, that did not  
24 happen. That is not true. But he had to try to find some way  
25 to lie his way out of this.

26 There were hundreds of people talked to in this case,  
27 probably more than, well, definitely more than any case I have  
28 ever seen. They want to try to confuse the issue by pointing  
29 the finger at Doyle Simpson, the fellow that owned the gun.

1 But as you heard the officers testify, they interviewed the  
2 people that he worked with, and they verified that he was  
3 there at the time the crime occurred. They can't put the  
4 blame on the poor fellow that owned the gun because he didn't  
5 do it.

6 Melissa Schoene with the lab did a good job of trying  
7 to preserve the scene. She did a good diagram so that y'all  
8 could see what the scene looked like. A lot of trial juries  
9 don't get to get a good picture of what was there and what  
10 happened. Of course, thank goodness y'all didn't have to see  
11 the scene. What you saw was close enough. The scene was  
12 terrible.

13 BY THE COURT: That is 20 minutes.

14 BY MR. EVANS: Thank you, Your Honor.

15 BY MR. EVANS:

16 Doyle Simpson tried to help the officers carry them  
17 to where he had shot the gun that was stolen out of his car.  
18 Steve Byrd with the lab was able to absolutely say that the  
19 bullets that he test fired from his gun when he shot it were a  
20 positive match to the bullet that was recovered out of the  
21 mattress, and I want you to remember; that was the bullet that  
22 went through Bertha Tardy's head. So we know that the gun that  
23 came out of Doyle Simpson's car was the same gun that killed  
24 Bertha Tardy, without any doubt.

25 This Defendant is guilty of capital murder. We have  
26 proven the case to you, and when you go out to vote on this  
27 case, we are going to ask that you return a verdict of "We, the  
28 jury, find the Defendant guilty of capital murder." And this  
29 will only be the first phase. I want you to remember that at



1 this phase all you consider is guilt and innocence.

2 Once you return your verdict of guilty, then we will  
3 proceed further, and the Judge will re-instruct you on what you  
4 have to determine to look at the second phase. But in this  
5 phase the only thing that you are asked to do is return a  
6 verdict of guilty, and that's what we are asking you to do.

7 Thank you, Your Honor.

8 BY MR. BILLY GILMORE: May I proceed, Your  
9 Honor?

10 BY THE COURT: Yes, sir.

11 FINAL ARGUMENT BY MR. BILLY GILMORE:

12 Ladies and gentlemen of the jury, I will only get a  
13 chance to speak to you one time. Mr. Evans gets a chance to  
14 come back and speak to you after I have spoken to you.

15 When we started this trial on Monday, we talked about  
16 various things when you were seated out here and then again  
17 when you were seated here. We talked about the burden of  
18 proof. We talked about reasonable doubt, and we are at that  
19 stage now. You have heard the case. Now you have got to  
20 deliberate and see if the State has met that burden. Have they  
21 proved to you beyond a reasonable doubt, in fact, this  
22 Defendant did this crime?

23 Now I will agree with Mr. Evans. I was in law  
24 enforcement before I went into this business. This is probably  
25 one of the most gruesome crime scenes I have ever seen. I  
26 didn't see the scene, but I saw the pictures as you did. It is  
27 bad. But it is bad to convict a wrong man.

28 Now I kept notes, and I see most of you kept notes,  
29 and Mr. Evans talking about a road map. Well, let's go back

1 over this road, and let's see what we have heard this week.  
2 Let's refresh our memories. Of course, you were told that  
3 Curtis Flowers was charged with this crime of capital murder of  
4 Bertha Tardy, and that's the only thing he is charged with that  
5 you are deliberating on, that one charge and that one charge  
6 only.

7 Now I talked to you also on Monday, I believe, about  
8 inconsistencies; be looking for them. I think you have seen a  
9 lot of inconsistencies in this case, what this witness said,  
10 what that witness said. We haven't tried to play one against  
11 the other. What they said is there; you heard it. You made  
12 notes; I made notes. It's for your consideration.

13 And also when we started this case, remember I said  
14 the proof wasn't beyond all doubt. If you would, you would be  
15 witnesses rather than jurors. The proof is beyond a reasonable  
16 doubt. Well, if you will go through this evidence and look at  
17 it, there has got to be reasonable doubt. There is too many  
18 inconsistencies. Too many. Let's just go through briefly the  
19 witnesses.

20 Chief Hargrove, first at the scene after Sam Jones  
21 got there. All he did at first was to go in and see what  
22 happened and back out. He got on his radio. He called for  
23 backup. Now, of course, he called the dispatcher at the police  
24 department. The dispatcher called the ambulance for the  
25 backup. She is the one that called, or he or whoever the  
26 dispatcher was, called for the DA's Office, called for the lab,  
27 called for the investigators. Mr. Evans indicated maybe the  
28 person was there when Chief Hargrove was there. Chief Hargrove  
29 didn't leave the scene. He secured the scene. That was

1 basically what Chief Hargrove testified to. He told you that  
2 he turned the investigation over more or less to the state  
3 investigators.

4 Let's talk about Sam Jones. Sam Jones had worked  
5 there for 50 years. A finer gentlemen you ever want to meet.  
6 He told it like he knew it to be, what he thought it to be,  
7 said he had worked there for 50 years. What did Sam Jones  
8 say? He said Ms. Tardy had called him the night before about  
9 working. He told her he would. What else did he say? He said  
10 Ms. Tardy again called him about 9 o'clock the next morning to  
11 remind him she wanted him up there. He said he left home.  
12 Well, he first said he arrived there at 9:30. Then he went  
13 back and said he left home at 9:30. So he either arrived at  
14 the scene or he left home at 9:30, one of the two; said it took  
15 him about 10 or 15 minutes to get there; went to the front  
16 door. If you remember, he knew exact how far it was two ways  
17 to work. He had been going so many years. If he went straight  
18 across 51, it was nine tenths of a mile. Or if he had to go up  
19 and make a block, it was 1.2 miles. Remember what he said? If  
20 he pulled up at 51, if the light was on red, he would turn to  
21 the left because he knew it would be green when he got there.  
22 But if it was on green, he knew it would be red by the time he  
23 got there, so he went the other way.

24 Now he told you how he found the scene, how he went  
25 for help. He did what anyone would do under the circumstances  
26 maybe. There could have been somebody in that store before and  
27 after Sam Jones was there. I don't know when the footprint was  
28 left in there or the shoe track was left in there. Nobody else  
29 knows except probably the person that left it there. Remember,

1 I asked him about Doyle Simpson working there, and he said  
2 Doyle Simpson had worked there in years past.

3 I believe the next witness they called was Barry  
4 Eskridge. He worked with the ambulance service, and basically  
5 all he did was carried BoBo to the hospital. But later they  
6 checked his shoes, and it was not his shoes that left the track  
7 because he was there right in the middle of the scene.

8 The next witness was Eddie Robinson, the coroner or  
9 the medical examiner, I believe they call them now, from  
10 Grenada County because the one from Montgomery County was not  
11 there. So they called him and in an official capacity as  
12 medical examiner, he is the one that called the Crime Lab. I  
13 believe he is the one that called the Crime Lab, not the Police  
14 Chief.

15 All right, Melissa Schoene from the Crime Lab. She  
16 talked about two types of evidence, well trained as you  
17 observed her there in giving testimony. She testified that one  
18 time of evidence that she retrieved was photographs which you  
19 have seen. The other type was casings, projectiles and  
20 fragments. She said she found five separate casings or hulls  
21 and one live round. That was a hull with the bullet still in  
22 it. She found two projectiles. She found two fragments, and  
23 she, if you will remember, drew them on the diagram which you  
24 will have to look at.

25 What else did she do there other than take pictures  
26 and gather up the projectiles and the hulls and measure the  
27 various things for her diagram? She took fingerprints. She  
28 took fingerprints. And Curtis Flowers was fingerprinted, and  
29 along with these fingerprints that were taken, Curtis Flowers'

1 fingerprints were sent to the lab for comparison. There has  
2 been a comparison of fingerprints with Curtis Flowers.

3 What other thing did she do while she was there  
4 outside the scene? She was called to take fingerprints from  
5 Doyle Simpson's car which she said she did. Those fingerprints  
6 were compared to Curtis Flowers, but there has been no  
7 comparison.

8 And she told you about taking the picture of the shoe  
9 print and how she went about delivering the various and sundry  
10 pieces of evidence to the lab, and they went through all the  
11 rigmarole of how they get it from one person or the other and  
12 then get it back, which is proper procedure. And she talked  
13 about Joe Andrews being the shoe expert. She was not.

14 What did she tell you about the money drawer when she  
15 got there? It was closed. Someone opened it for her, and she  
16 described to you what was inside the cash drawer. Now if you  
17 will remember, this was just a drawer, a cash drawer put in a  
18 wood drawer inside the counter. She said that cash drawer  
19 contained change, some keys, an Exxon credit card, and some  
20 envelopes containing some checks, and contained no bills.

21 Then she talked about the safe. She was asked  
22 whether or not the safe was locked, opened, closed, and she  
23 stated that the safe was closed. She opened the safe to look  
24 inside, and she photographed the inside which I believe there  
25 is a picture in evidence for you to look at. And to her  
26 opinion, nothing was disturbed in that safe.

27 What else do we have that you have pictures of? What  
28 about the purse sitting in the middle of the counter  
29 undisturbed, contents intact. If you will remember, I asked

1 Dr. Hayne if Ms. Tardy still had her valuables on her when she  
2 got there, and he said she did. He talked about the various  
3 rings and earrings and whatever he took off of her that were  
4 sent back.

5 I said that to say this. Was there a robbery?  
6 Nobody knows. There has been no proof put on as to whether any  
7 money was ever put in that cash drawer that morning. We do  
8 have testimony that Ms. Rigby went to the bank with a deposit  
9 that morning. But there is no proof that any money was ever  
10 put in that cash drawer that morning, none whatsoever. There  
11 is no proof there was any money taken from that safe. And  
12 remember, one of the elements of a charge of capital murder has  
13 to be another crime committed when that murder was committed,  
14 and they are alleging in this crime armed robbery. Was there  
15 an armed robbery?

16 And one other thing, if you will remember I asked Ms.  
17 Schoene, and keep in mind this is a trained professional crime  
18 scene analysis, ever what that is. Remember I asked her did  
19 she observe any damage to the glove compartment of Doyle  
20 Simpson's car. She said, I didn't even look, but she was all  
21 around that pocket taking fingerprints but didn't notice any  
22 pry marks on that glove compartment. Was the gun stolen?

23 Basically, all Dr. Hayne testified to other than what  
24 he described to you was the wound was consistent to a .380  
25 caliber pistol. Consistent. Let's talk about the projectile.  
26 The officers testified they went out and removed some  
27 projectiles out of a post behind Doyle Simpson's mother's house  
28 which Doyle Simpson said he shot in there. What did the  
29 ballistics expert say about the bullets? Which ones matched?



1 The bullet that came out of the mattress that was found almost  
2 a month after the investigation started; why was this bullet  
3 not found if it was there during the crime?

4 Something else to think about; the other projectiles  
5 were found, but they were not able to match the projectiles  
6 with the ones that came out of the post. Why not? Think  
7 about this. The officers want to tell you that they recovered  
8 this bullet from the mattress, that it had already gone through  
9 Ms. Tardy's skull, ricocheted off a brick wall and into a  
10 mattress. Yet it is a bullet they can recover a matching slug  
11 out of the post to match with it. Why was this bullet able to  
12 be matched with the one out of the post and the rest of them  
13 were not able to be matched with the one out of the post?  
14 Reasonable doubt.

15 What did, another thing that Dr. Hayne said that I  
16 feel like was important -- and you fellows that shoot guns and  
17 maybe you ladies -- he described three types of wounds. A  
18 contact, which would leave, I believe you call it a smudge or  
19 gunpowder; call it contact, a near contact, and a distant  
20 gunshot wound. He described this wound that Ms. Tardy had as  
21 being a distant wound, and he said that was not less than two  
22 feet, not less than two feet. You have got four people that  
23 were shot, one shot twice. All were shot in the head. All  
24 four of them had classifications of distant wounds, consistent  
25 with somebody that target practiced, knew what they were  
26 doing. They knew how to shoot a pistol.

27 What did Doyle Simpson tell you? He target  
28 practiced. What did Curtis Flowers tell you? He didn't target  
29 practice, didn't even have a gun. Inconsistencies.

1           I think one of the most truthful witnesses in this  
2 whole case has been Charles Collins. Charles Collins, trying  
3 to help, he sat on the stand, and I asked him about him being  
4 forgetful. If you remember, he had gone to the laundry two or  
5 three times, forgot to get his clothes. He had gone to pay his  
6 gas bill a time or two and forgot. I think he had gone to the  
7 bank and decided it wasn't open. He went to the post office,  
8 and then he forgot to go to the bank, back and forth. He had  
9 gotten the wrong spark plugs or something. But anyhow, he told  
10 you that he saw Ms. Rigby coming out of the post office. They  
11 had talked, that they crossed the street. He was parked behind  
12 her. They started down, I believe this is Summit Street to the  
13 east. She turned right on Front Street. He must have got a  
14 little slow start because there was a car and two got in  
15 between he and Ms. Rigby, but when he made the curve and got on  
16 down there, then Ms. Rigby was getting out and going in the  
17 store.

18           Now what else did Charles Collins say? He saw a  
19 brown small car. He didn't say it was a Pontiac. I think he  
20 said it was a Pontiac or he named, I think two or three kinds  
21 it may have been, but what did he say about the car? Said it  
22 had taillights all the way across the back. There is a picture  
23 here of Doyle Simpson's car. I want you to look at that  
24 picture. Look at it. What else did he describe about this  
25 particular car? He said it was dirty and dusty. Remember, I  
26 have made an issue to ask witnesses that knew about the car  
27 what did it look like, and they all said it was dusty because  
28 he lived out on a dusty county road. He said he saw these  
29 people at a slight glance or instant glance or some terminology



1 like that. He was trying to be helpful. He comes back up  
2 there and tells them what he had seen as most people would do.  
3 They gave him some pictures to look at, what we call a photo  
4 lineup. He told them this guy looks like one of them. I  
5 believe they did a second lineup. He said this guy looked like  
6 one of them.

7 If you will remember, after I talked to him and Mr.  
8 Evans got to talk to him, he carried a photograph lineup up  
9 there, and he said this ain't the one y'all showed me. But  
10 most important, he came to the conclusion that Curtis Flowers  
11 was not the man he saw in front of Tardy's Furniture Store that  
12 morning. What did he say? He first said he didn't wear  
13 glasses; the man didn't have on glasses. I believe the Judge  
14 asked him to take his glasses off. He did. Then the next  
15 comment was, well, this man sitting here is a little heavier  
16 than the one I saw. When I talked to him, what did he say?  
17 He said this man sitting at the table is darker than the man I  
18 saw standing out in that street. Then what did he say? No,  
19 sir. That is not the man I saw. No, sir. That is not the man  
20 I saw.

21 I believe the next person they brought was Frederick  
22 Veal, a convicted felon. He said that Curtis Flowers told him  
23 that he took twenty something, twenty hundred something  
24 dollars; that he smoked up a thousand dollars worth of crack  
25 cocaine that day, and then he went to Texas. Well, he  
26 evidently concocted a story from the news, the television,  
27 newspapers that he may have picked up while he was there in  
28 jail. If Curtis Flowers smoked up a thousand dollars worth of  
29 dope, don't you think the officers that were interviewing him

1 and interrogating him would have known he was high on drugs?  
2 Curtis Flowers didn't to go Texas until, I believe he said  
3 late, last part of September, went there to get a job.

4 All right, from there we went to James Edward  
5 Kennedy. Now he is the man that lived down on the corner of  
6 Angelica Drive and Highway 51 that said he saw Curtis Flowers  
7 walking that morning. How did he describe him? Had on a  
8 black sweater and white long pants; white long pants.

9 The next person they called was Katherine Snow. She  
10 said she saw somebody standing up there leaning against Doyle  
11 Simpson's car. Leaning on the hood, I believe she said. She  
12 said she picked him out, out of a line up. Remember, I asked  
13 her about the clothes. She could not remember what clothes he  
14 had on that day. But she said when she went and moved her car  
15 and came back, this person was gone. She didn't say she was  
16 breaking in that car. She said this person, whoever he was,  
17 was just leaning against the hood.

18 But I'm going to jump a little ahead here, and I want  
19 you to listen to this. When Doyle Simpson got on the stand to  
20 testify, he testified that Katherine Snow told him that the guy  
21 leaning against the car had on blue short pants and a blue  
22 shirt. Katherine Snow could not describe what he had on.  
23 Where did Doyle Simpson get this story about what this man had  
24 on?

25 Maurice Hawkins, another convicted felon. His story  
26 was that this was done for personal reasons, not for money.  
27 Well, that conflicts what Mr. Veal said. Mr. Veal conflicts  
28 what Mr. Hawkins says. What was the testimony about Mr. Veal  
29 and Mr. Hawkins that ran almost the same? They were both

1 immediately released from jail when they made this statement to  
2 somebody.

3 I believe Mr. Kennedy said that he saw this person  
4 around 7:20 that morning. Edward Lee McChristian was the older  
5 man was sitting up on the porch up on Academy Street. And he  
6 says he saw Curtis Flowers walk by his house at 7:45. He  
7 didn't notice the clothes. I'm going to skip over Mr.  
8 Matthews' testimony at this time.

9 Clemmie Flowers [sic]. Where is her inconsistency?  
10 She said that she went to town. She got Roy Harris to drive  
11 her. That was the hard of hearing man, if you remember. She  
12 says they went down in front of Tardy Furniture. She decided  
13 she wasn't going to pay her note. Remember, that's what she  
14 was going up there for. They turned on Carrollton Street and  
15 on up to Church Street, and she saw Curtis Flowers running.  
16 What did Mr. Harris say? He said when he got on Front Street,  
17 she told him to turn on Summit Street. I don't think he knew  
18 what the streets were, but he said he did not go down past  
19 Tardy Furniture. He went up to the church and turned which is  
20 Church Street, if you will look on the map you will be  
21 supplied, and went up through there. And after he had passed  
22 Carrollton Street, he saw somebody run. He didn't know who it  
23 was, didn't know who he was.

24 All right, he was asked how was he dressed. I  
25 believe he made a comment he was wearing a bebop hat. Not  
26 knowing what a bebop hat, I asked him, and remember, he said it  
27 was one of those that the bill snapped up front. First time  
28 anybody has put a cap on him. And I believe he said he had a  
29 white T-shirt on. I don't believe this man changed clothes all

1 up and down the street.

2 Patricia Hollman lived in The Project, a house or two  
3 down from Curtis Flowers and Connie Mae Moore. She said it was  
4 10 to 20 feet between the two houses. All right, what did she  
5 say? She said that Curtis went in his back door of his house  
6 around 7:30. He stayed there less than 30 minutes, probably  
7 about 20 minutes, and he left again, and said he was walking  
8 fast. And the question was asked how was he dressed then?  
9 She said he had on a black sweat pants that was nylon with a  
10 zipper up the leg, white shirt with writing on the front, and  
11 tennis shoes.

12 Okay, then we get to Joe Andrews, Jr., who says he is  
13 a microanalyst. If you remember, he was the one that talked  
14 about the shoe prints. And basically, they blew up the shoe  
15 print where he could examine it proper, and by examining other  
16 shoes, they determined, he or some other officer determined it  
17 was from a Fila shoe. And if you remember, I asked him if he  
18 knew how many of that shoe was sold, and I forget how many  
19 hundreds of thousands were sold. And I asked him was there  
20 different colors and designs, and I think he said yes. The  
21 shoe that is here in evidence is not the shoe. We do not have  
22 the shoe, but it's just one for you to look at.

23 Mr. Andrews being a print specialist, footprints,  
24 tire prints and this type thing, remember I asked him did he  
25 compare Curtis Flowers' shoes with the picture of the diagram  
26 he had, and he said he did but it didn't match. Remember, I  
27 went further. I said, Mr. Andrews, don't people wear their  
28 shoes out in a different way? Remember, I made a comment; I  
29 wear my shoes out on the right back heel. As an expert, why

1       couldn't he come in this court and say these shoes were worn  
2       the same way? Because they weren't; that's why.

3               All right, and I believe he also was an expert on the  
4       gunpowder, and he went into quite detail about how he tested  
5       for it, and I won't go into all that. I wouldn't know how if I  
6       wanted to. But he did say that he tested for three things:  
7       lead, barium, and antimony. Chemicals, I have no knowledge  
8       what they are, but I asked him wasn't lead a component in car  
9       batteries, and he said it was. I asked him wasn't barium a  
10      component in spark plugs, and he said it was. And I asked him  
11      was a component in antimony a strengthening for lead? And he  
12      said it was. So when Mr. Evans tells you that's the only  
13      element in the universe that matches up, I think Mr. Evans kind  
14      of didn't listen.

15             All right, Bill Thornburg, the Deputy Sheriff there  
16      from Montgomery County since 1981, he was the one that saw a  
17      Fila shoe box in Connie Moore's house. That was the first day  
18      there. He didn't think it was important because I presume at  
19      that point they didn't know what brand of shoe it was. Then I  
20      believe they went back later and recovered the shoe box. What  
21      did Connie Moore say about it? She kept the shoe box because  
22      she had Christmas bow ribbons in it. I am sure you ladies do  
23      that; I know my wife does that. She keeps boxes with things  
24      in, including bow ribbons.

25             Of course, you have heard Connie Moore testify about  
26      her buying her son Marcus those shoes in November of '95. You  
27      also heard her testify that the son went to live with the daddy  
28      on January the 15th of '96 because it was Dr. Martin Luther  
29      King's birthday is the reason they were so certain what day it

1 was. You also heard Marcus testify that mama did buy him those  
2 shoes, and his feet was growing so fast he outgrew them, and he  
3 threw them in the garbage out by the street, and that's the  
4 last he saw of those shoes.

5 How much time do I have, Your Honor?

6 **BY THE COURT:** You have got 10 minutes.

7 **BY MR. BILLY GILMORE:** Okay, sir.

8 All right, Steven Byrd was the ballistics expert, the  
9 one that looked at the bullets. And I believe he said that  
10 some of the projectiles they were referring to he could not  
11 include or exclude as being the same ones shot from the same  
12 gun that was, where they recovered the projectiles at the post  
13 out at Doyle Simpson's mother's house. They could not include  
14 or exclude. But he said that the only one he matched up was  
15 the one that came out of the mattress, if you remember, the one  
16 that supposedly went through, that did the damage, hit the  
17 brick wall and was found almost a month later.

18 All right. I think one of the more significant  
19 witnesses here as far as we are concerned with inconsistencies,  
20 motive - Doyle Simpson. Well, everybody is alleging it was  
21 Doyle Simpson's gun. It may have been. But who fired the gun  
22 is what we are looking for.

23 The State is saying Curtis Flowers fired it. Did  
24 he? Did Doyle Simpson fire it? Did someone else fire it?  
25 Who fired the gun? Doyle Simpson had worked at Tardy's for a  
26 good long while. He was familiar with the inside and outside  
27 of the store. He said he last saw the gun the night before  
28 when he put it in the car. The next day he drove the car to  
29 work. He went out at break time at 9:15, and then he went out



1 again at 10:20 to let the windows down. Then he went out at  
2 10:45 to go get some lunches. I believe he said he clocked out  
3 at 10:29, but he went around and picked up some money to go buy  
4 lunches. He said when he got in, shut the door, the glove  
5 compartment opened up, and he looked and his gun was gone. Who  
6 did he first accuse of getting his gun? His own brother.

7 And he went on and testified about target practicing;  
8 he didn't deny it. But what is most significant about Doyle  
9 Simpson's testimony? When the officers interviewed him, the  
10 first thing he did - and remember I made this statement at the  
11 beginning - he lied through his teeth. He told those officers  
12 he had gotten that gun from his brother or somebody in New  
13 Orleans; went so far as to contact his brother in New Orleans  
14 to back up that alibi. Why? Why? He didn't report it to the  
15 police. He went up to the chicken place; I believe they call  
16 it Fuzzy's. He told somebody in there, and they called the  
17 police.

18 What is the next amazing thing about Doyle Simpson's  
19 testimony? He said he did not leave work that morning, did not  
20 leave work that morning. He said he clocked in at 6:30; he  
21 clocked out at 10:29; other than the times he came out on  
22 break, he was there. Where do we have inconsistency here? His  
23 own sister came in here and testified she saw him uptown in  
24 that very brown, dusty car around 9:30. His own sister saw him  
25 and testified she saw him at around 9:30 up close to where she  
26 worked. Remember she said no doubt in her mind because I asked  
27 her several times was there any doubt in her mind was that her  
28 brother, and she said no. And I asked her was there any doubt  
29 in her mind was it the same day that this incident happened

1 down at Tardy's. She said no doubt in her mind.

2 So who is telling the truth? Is Doyle Simpson  
3 telling the truth? Is his sister telling the truth? One of  
4 them is not. And I guarantee you the sister has nothing gain  
5 or lose by this. Doyle Simpson has a lot to lose.

6 I'm not going to go into the rest of the testimony.  
7 I have already covered what Connie Moore said. Well, I will go  
8 into James Glover. You remember, he testified that Curtis  
9 Flowers came over there a little after 9 o'clock, and the  
10 question was raised, How do you know what time it was?  
11 Remember, Priscilla Ward had to go to court at 9:00, and she  
12 left about 10 minutes to 9:00. And Curtis didn't come over  
13 until 10 or 15 minutes after. He had nothing to gain or lose  
14 by his testimony.

15 Latoya Harding told basically the same thing, that  
16 Priscilla, she was there visiting the summer with Priscilla  
17 Ward; that Curtis came over there after Priscilla Ward went to  
18 court. And she said she left, I think she said maybe a quarter  
19 till, but she says Curtis didn't come over there until after 9  
20 o'clock. That is not disputed.

21 The first interview Curtis Flowers made to the  
22 officers, he said he was over at his sister's house around  
23 9:30. That was his first statement. Then they questioned him  
24 a few days later, and they raised the issue of 11 o'clock. But  
25 I guarantee you, he remembers the day that he talked to them  
26 more so than two or three days later. He said he was over  
27 there around 9:30, consistent with what Glover says and what  
28 Latoya Harding says.

29 Mr. Flowers got on the stand and he testified he



1 didn't do it. He didn't do it. He said he wasn't even on that  
2 side of Highway 51. But I asked him a direct question, Did you  
3 kill Bertha Tardy? And he said, "No, sir. I did not."

4 Now there is one unanswered question here. Who did  
5 kill Ms. Bertha Tardy? Who did kill Ms. Bertha Tardy?  
6 Curtis Flowers could not have killed Bertha Tardy in the time  
7 frame that has been shown in this trial. He could not have  
8 been in that many different places and changed clothes that  
9 many times within that time frame. He was dressed, according  
10 to the witnesses, three or four different ways. I'm not saying  
11 they didn't see Curtis Flowers sometime during that week or the  
12 week before or the week after dressed as they described. But  
13 there is too much inconsistencies here to convict Curtis  
14 Flowers of this crime.

15 The State has the burden of proof to show beyond a  
16 reasonable doubt that Curtis Flowers did, in fact, commit this  
17 crime. They have the burden of proof to show the elements of  
18 the crime. First, a murder was committed, and first-- and  
19 second, there was an armed robbery in process when that murder  
20 was committed which makes it capital murder. There has been no  
21 proof there has been an armed robbery. There is no proof that  
22 Curtis Flowers took any money from that store or anybody else  
23 took any money from that store. They may or may not can  
24 account for the money in the cash drawer, but there is no proof  
25 that anyone took that money. The store may have been  
26 unattended for a while. Someone else could have gotten the  
27 money, but the State has not proved the element of armed  
28 robbery beyond a reasonable doubt. They have not proved the  
29 elements of a capital murder beyond a reasonable doubt.

1           Now on your oath you need to consider all evidence.  
2           And if the State has not convinced you beyond a reasonable  
3           doubt according to the law that the Court has given you,  
4           according to common sense that each one of us have, if there is  
5           a reasonable doubt in your mind, then the law says and common  
6           sense tells you, you have got to vote not guilty.

7                       **BY THE COURT:** That is time, Mr. Gilmore.

8                       **BY MR. BILLY GILMORE:** I would urge you to  
9           consider all these inconsistencies. And I don't believe you  
10          can remove that reasonable doubt from your minds on your oath.  
11          Thank you very much.

12          **FINAL ARGUMENT BY MR. EVANS:**

13                      Ladies and gentlemen, this won't take long, but I do  
14          want to point out a couple of things in here. To start with, I  
15          thought me and Mr. Gilmore were trying the same case, but  
16          apparently we weren't in the same courthouse because a lot of  
17          what he said to y'all, I didn't hear. That's why it is  
18          important that the jury listen to what they remember, and in  
19          this particular case, y'all each took your own notes. So I  
20          think y'all know what was said and what happened during this  
21          trial.

22                      A couple of things that I do want to point out: For  
23          the robbery, all that we have to prove is that money was taken  
24          from the presence of Ms. Tardy, that if she had not-- if she  
25          would have been able to, she could have kept somebody from  
26          taking. This is by either violence to her person or by fear.  
27          Definitely, shooting her through the head was violence to her  
28          person. If she had not been shot through the head, she could  
29          have kept someone from taking her money. The money was taken

1 from the cash register. Normal operating procedure told that  
2 money was always in that store, at least enough for the \$300.00  
3 opening up money. That money was always kept in the safe until  
4 Ms. Tardy went in, unlocked, took the money drawer out of the  
5 safe, put it in the front drawer. The money drawer was in  
6 there which meant she had already taken it out of the safe and  
7 put it up there. All of the bills were taken.

8 Also, there was a green money bag taken out of the  
9 safe that was never found that we don't know how much money was  
10 in there. I don't know how much money he got out of the safe,  
11 and I don't care because if he took one dollar or five million  
12 dollars, it is still robbery, and he is still guilty.

13 Distant gunshot wounds, don't be confused by that.  
14 Dr. Hayne explained that. Anything that is over two feet is  
15 distant gunshot wounds, and I don't believe it would take very  
16 much of an expert to stick a gun within two feet of somebody's  
17 head and hit them. It would take a coward like this sitting  
18 over here.

19 Opposing Counsel said that Mr. Collins said that this  
20 was not the person. Well, if he ever said that, I wasn't in  
21 the courtroom when he said it because what I heard him say was,  
22 It looks like that person right there, but he didn't have  
23 glasses on. Well, it's easy to come into court and put a suit  
24 on. It's easy to come into court and stick a pair of glasses  
25 on your face, anything to try to change your looks, but he  
26 still said, it looks like him.

27 Why is that so important? Because of all the other  
28 witnesses. He didn't try to bolster and say well, I am sure  
29 that is him. He tried to tell you exactly what he saw just

1     like these other witnesses did.

2             They want to jump on Clemmie. They want to say well,  
3     our witness, Roy Harris, said that we went down another block.  
4     We turned right before Tardy Furniture, but we did go down  
5     Front Street. But what is so important about that? He did  
6     remember that when they were behind Tardy Furniture, somebody  
7     was running. He didn't see him, but what is the most important  
8     part? While that person was running, Clemmie told him, "That  
9     is Curtis Flowers." We are not talking about a week later or a  
10    month later that she decides that's the person she saw  
11    running. We are talking about immediately after he killed the  
12    folks and was running from the store, she said, That is Curtis  
13    Flowers running right there.

14            Fredrick Veal and Maurice Hawkins are the two final  
15    elements that make this case beyond any doubt, not just beyond  
16    a reasonable doubt. Because as most criminals do, he didn't  
17    have the ability not to brag about what he had done. When he  
18    got in the jail, he had to brag to these folks about how he had  
19    killed the people at Tardy Furniture. These two people had  
20    absolutely nothing to gain as they had told you. Hawkins had  
21    already been put on house arrest. His case was completely  
22    over, nothing to gain. He calls the Sheriff and wants to tell  
23    him about what this man sitting right over here had told him.  
24    Fredrick Veal had already been turned loose on his charge  
25    because there was nothing there. His case was dismissed before  
26    he ever talked to Ricky Banks, the Sheriff of Leflore County.

27            And again, that's another law enforcement agency that  
28    was working with all of us on this case. Sheriff Banks picks  
29    up the phone and says I have got some information over here in

1 the jail that I think--

2 BY MR. BILLY GILMORE: --Your Honor, I'm going  
3 to object. That is not testimony. That was never  
4 testimony.

5 BY THE COURT: What is that?

6 BY MR. BILLY GILMORE: What Sheriff Banks said.

7 BY THE COURT: I don't think it was testimony.  
8 I don't think, there has been no testimony of what  
9 Sheriff Banks said. Go ahead though, Mr. Evans.

10 BY MR. EVANS: Thank you, Your Honor. How much  
11 time have I got left?

12 BY THE COURT: 15 minutes, 14 maybe.

13 BY MR. EVANS: Thank you.

14 This information came to the investigators. They  
15 followed it up. They took the statements, and it is verified.  
16 They want to try to say well, it had to be Doyle Simpson. They  
17 have got to have somebody to try to blame, but it's not Doyle  
18 Simpson, and the evidence shows you that. His sister that they  
19 keep saying, well, this is his sister. But it's also this  
20 person's relative that doesn't want you to convict him. She  
21 is so confused apparently somebody -- now this is what I think  
22 is funny about her testimony. Somebody has shown her a picture  
23 of Doyle's car. That is why I didn't want to introduce it  
24 until I got ready to. I had already introduced a picture  
25 showing the back of the car which showed that the taillights  
26 did not go all the way across. But I held the other picture  
27 because I knew what she was going to say. She was going to say  
28 the car that she saw drive by had a light tan streak about this  
29 big right down the middle of it. And that is so funny because

1 his car doesn't have, but in the picture that shows the side of  
2 the car, the sun is glaring on the side, and it looks like a  
3 streak. When you look at the car, it is no streak in there.

4 She also said well, I didn't see how many people were  
5 in there, and of course, y'all don't know how far off the road  
6 that place is. But not only did she not see how many people  
7 were in there, she couldn't see who was in the car. This is  
8 just another witness to attempt to try to confuse you, but what  
9 it boils down to on Doyle. It was verified through the  
10 investigation that he did not leave work during that time  
11 period.

12 Patricia Hollman was not only a friend; she lived  
13 next door to Connie. She was the godmother of one of her  
14 children. This isn't the kind of person that is going to come  
15 up and lie on somebody like Curtis. What did she tell you?  
16 It boils back to the shoes. She said that I was within ten  
17 feet of him on the morning of these murders. He had Fila Grant  
18 Hill tennis shoes on his feet - I know they were Fila Grant  
19 Hill tennis shoes because I just bought my sons each a pair  
20 just like them - the day of the killings.

21 Opposing Counsel tries to water down the  
22 inconsistencies in the Defendant's statement. I want you to  
23 remember that the one statement that I kept asking him about  
24 all the inconsistencies of was the one statement given on one  
25 day that was tape recorded. Every one of those inconsistencies  
26 that I got him to admit were in there were in that same  
27 statement. We are not talking about different dates that he  
28 told different things. He told that many different versions  
29 one time.



1           This Defendant is guilty. He is not guilty because I  
2 tell you he is guilty. He is guilty because the evidence says  
3 he is guilty. He is guilty because the physical evidence, the  
4 witnesses that see him there, the people that he bragged to; he  
5 is guilty because of all of the things that you have heard.  
6 There can be no reasonable doubt in this case. The evidence is  
7 clear, and it boils down to one thing that I tell juries all  
8 the time. You are here to use your good common sense. You  
9 look at the evidence; you make the determinations. The  
10 Defendant thinks you are stupid enough to believe him, but the  
11 facts are there. I ask that you, when you are released by the  
12 Judge to deliberate, that you go out and you vote on this case,  
13 and you return a verdict of "We, the jury, find the Defendant  
14 guilty" because he is guilty.

15           Thank you, Your Honor.

16           **BY THE COURT:** Ladies and gentlemen, of course,  
17 now you have heard all the evidence, and you have  
18 heard the arguments. I'm going to let you deliberate  
19 in the morning. You will have the instructions on  
20 the law to take with you to the jury room when that  
21 time comes, and plus you will have all of the  
22 exhibits that have been admitted into evidence at  
23 your disposal. I will probably, in relation to the  
24 slides, I will probably give you the pictures, and if  
25 you decide you want to see the slides, then I will  
26 have those delivered to you after that, unless you  
27 tell me you want them on the front end.

28           I'm going to let you go with the same  
29 instructions that I have given you in the past, but

1 with this additional one. It is very, very important  
2 that you do not deliberate on this case until in the  
3 morning because that is when I'm going to tell you  
4 that you can do that. And so you are still, even  
5 though it's all done, it's not yours until I tell you  
6 it's yours which I will do in the morning.

7 Now we have been starting at 9 o'clock. Do  
8 y'all want to continue that, or would you like to  
9 start earlier than that? That suit you? 9:00 is all  
10 right?

11 BY ONE JUROR: Let's go at 9:00.

12 BY ANOTHER JUROR: 8 o'clock.

13 BY ANOTHER JUROR: Do you want to go at 8:00?

14 BY ANOTHER JUROR: Let's go at 8 o'clock.

15 BY THE COURT: 8:00 suit all y'all? Okay, I  
16 will see y'all here at 8 o'clock.

17 TRIAL WAS RECESSED FOR THE DAY AT 7:58 P.M. ON  
18 OCTOBER 16, 1997.

19  
20 COURT WAS OPENED AT 8:04 A.M. ON FRIDAY, OCTOBER  
21 17, 1997 WITH THE COURT, ALL COUNSEL, THE DEFENDANT,  
22 AND THE JURY PRESENT IN THE COURTROOM FOR THE  
23 FOLLOWING:

24 BY THE COURT: Ladies and gentlemen, it is now  
25 time for y'all to start your deliberations on this  
26 case. You will be entitled to take the instructions  
27 and all the exhibits. I will hand you the  
28 instructions now, in fact. That is the instructions  
29 on the law. The exhibits will be delivered to you.



1           There again, if you want, if you want-- you have got  
2           pictures and slides. If you want the slides, I will  
3           be glad to have them brought to you and set up. Do  
4           you want the slides?

5           BY SEVERAL JURORS: Yes, sir.

6           BY THE COURT: Okay, all right. We will get  
7           that done. So we will deliver all the exhibits to  
8           you, and you will have them all. When you have  
9           reached a decision, you should knock on the door and  
10          let the bailiff know, and he will let me know. If  
11          you for some reason have to communicate with me, it  
12          must be done in writing. So you will need to write a  
13          note and send it to me. Okay, with those  
14          instructions, you are entitled to retire and consider  
15          your verdict. Ms. Alexander, I need you to just stay  
16          seated if you will.

17          JURY RETIRES TO CONSIDER VERDICT AT 8:05 A.M.

18          BY THE COURT: Somebody may need to instruct  
19          them on how to work the projector.

20          BY MR. EVANS: I'm going to get that one slide  
21          out so it won't get jammed.

22          BY THE COURT: Okay.

23          BY THE BAILIFF: They were asking about a map of  
24          Winona.

25          BY THE COURT: There is a map in evidence, and  
26          they are going to have that.

27          (Exhibits were carried out by the Bailiffs along  
28          with the slide projector.)

29          BY THE COURT: Ms. Alexander, of course, you are

1 the alternate, and at this point the eleven original  
2 jurors and the first alternate have made it to this  
3 point. So you don't get to deliberate at this point  
4 of the trial. If they should return a verdict of  
5 guilty, then there will be another hearing today, and  
6 you will be able to participate in that. And then if  
7 somebody gets sick during that time, you will be  
8 seated as the alternate. Now I guess the worst part  
9 of this, I still have to sequester you until such  
10 time as I know what they are going to do. So the  
11 bailiff will put you in a separate room from the jury  
12 to await what their decision is. And you need  
13 refreshments? You need somebody to read or anything  
14 like that? You want a paper or something-- well, I  
15 can't give you a paper. I can give you part of a  
16 paper. But if you need anything, you let me know,  
17 and we will see about it. All right.

18 (Alternate Ms. Brenda Alexander was escorted to  
19 a separate room by a Bailiff.)

20 **BY THE COURT:** Come up here just a second. I  
21 need something on the record here.

22 (CONFERENCE AT THE BENCH WHILE THE JURY WAS OUT  
23 AS FOLLOWS:)

24 **BY THE COURT:** There were two witnesses  
25 requested by the Defense, Necie Fleming and Mary  
26 Ellen Fleming. They were requested yesterday. The  
27 Defense informed me that they did not know about  
28 these witnesses until 12:30 yesterday and that they  
29 were on the way to court. The Court made the

1 statement into the record that it was not going to  
2 hold up the trial waiting on them but would go ahead  
3 and hear the rest of the witnesses and see what the  
4 situation was. By the time when it came time for the  
5 Defense to rest, by that time the Flemings, according  
6 to what the Defense informed me, the Flemings had  
7 appeared. They were interviewed by the Defense  
8 Counsel, and the Defense Counsel elected not to call  
9 them after those interviews. Is that correct,  
10 gentlemen?

11 BY MR. JOHN GILMORE: Yes, Your Honor.

12 BY THE COURT: All right.

13 END BENCH CONFERENCE.

14 BY THE COURT: Let the record reflect that the  
15 Court Reporter, that the following exhibits have been  
16 introduced into evidence, and they have been  
17 delivered to the jury: S-1, S-1A, S-2, S-2A, S-3,  
18 S-3A, S-4, S-4A, S-7, S-7A, S-8, S-8A, S-11, S-11A,  
19 S-13, S-13A, S-15, S-15A, S-16, S-16A, S-17, S-17A,  
20 S-20, S-20A, S-21, S-21A, S-23, S-23A, S-26, S-26A,  
21 S-28, S-28A, S-37, S-37A, S-38, S-38A, S-39, S-39A,  
22 S-40, S-40A, S-41, S-41A, S-42, S-42A, S-46, S-46A,  
23 S-49, S-49A, S-50, S-50A, S-51, S-51A, S-52, S-52A,  
24 S-53, S-54, S-55, S-55A, S-57, S-57A, S-58, S-58A,  
25 S-73, S-74, S-75, S-76, S-77, S-77A, S-82, S-82A,  
26 S-83, S-83A, S-84, S-85, S-86, S-87, S-88A, S-89,  
27 S-90, S-91, S-92, S-93, S-94, S-95, S-96, S-97, S-98,  
28 S-99, S-100, S-101, S-102, S-103, S-106, S-110, and  
29 D-1.

1 BY THE COURT: Have you got any others?

2 BY THE COURT REPORTER: No, sir.

3 BY THE COURT: Okay, that is all the exhibits.  
4 They are being delivered to the jury.

5 (COURT WAS IN RECESS AWAITING THE VERDICT OF THE  
6 JURY. THE JURY KNOCKED AT 9:11 A.M. AND COURT WAS  
7 CALLED BACK TO ORDER WITH ALL COUNSEL AND THE  
8 DEFENDANT PRESENT.)

9 BY THE COURT: I want everybody in that is  
10 coming in. (Pause) Okay, ladies and gentlemen, I  
11 have been informed that the jury has reached a  
12 verdict, and I'm going to bring them in, and they are  
13 going to deliver that verdict to me to be read by the  
14 Clerk. I will maintain order in this courtroom, and  
15 there will be no displays of emotion either showing  
16 pleasure or displeasure at this verdict. Depending  
17 on what it is, we may have more work to do here  
18 today. So I expect the audience to do as they have  
19 done all through this trial as to maintain order for  
20 me.

21 JURY ENTERS COURTROOM AT 9:16 A.M.

22 BY THE COURT: Ladies and gentlemen, have you  
23 reached a verdict?

24 BY A JUROR: Yes, we have, Your Honor.

25 BY THE COURT: Is it the verdict of all twelve  
26 of you?

27 BY SEVERAL JURORS: Yes, sir.

28 BY THE COURT: Hand the Bailiff the verdict.

29 (Court read the verdict and then handed it to

1 the Clerk.)

2 BY THE COURT: The Defendant will rise. I ask  
3 the Clerk to read the verdict.

4 BY THE CLERK: "We, the jury, find the  
5 Defendant, Curtis Giovanni Flowers, guilty of capital  
6 murder as charged."

7 BY THE COURT: Okay, you may be seated. Do you  
8 want the jury polled?

9 BY MR. JOHN GILMORE: Yes, Your Honor.

10 BY THE COURT: All right. Sir, is this your  
11 verdict?

12 BY A JUROR: Yes, sir.

13 BY THE COURT: Is it yours, sir?

14 BY A JUROR: Yes, sir.

15 BY THE COURT: Yours, sir?

16 BY A JUROR: Yes, sir.

17 BY THE COURT: Yours, sir?

18 BY A JUROR: Yes, sir.

19 BY THE COURT: Yours, sir?

20 BY A JUROR: Yes, sir.

21 BY THE COURT: Yours, sir?

22 BY A JUROR: Yes, sir.

23 BY THE COURT: Yours, sir?

24 BY A JUROR: Yes, sir.

25 BY THE COURT: Yours, ma'am?

26 BY A JUROR: Yes, sir.

27 BY THE COURT: Yours, ma'am?

28 BY A JUROR: Yes, sir.

29 BY THE COURT: Yours, ma'am?

1 BY A JUROR: Yes, sir.

2 BY THE COURT: Yours, sir?

3 BY A JUROR: Yes, sir.

4 BY THE COURT: Yours, sir?

5 BY A JUROR: Yes, sir.

6 BY THE COURT: I find that the verdict is  
7 unanimous. Ladies and gentlemen, having reached that  
8 verdict, we now must go into the sentencing phase of  
9 the trial. This will incur some testimony. I will  
10 take a little break so that the lawyers can organize  
11 what they are going to put on, and I will let you go  
12 back to the jury room, and we will start shortly,  
13 probably within 30 minutes from now. The alternate  
14 may rejoin the jury.

15 Let me give you these instructions though. On  
16 the sentencing phase, you have heard no testimony  
17 whatsoever, so you are not to deliberate on that  
18 matter at all until such time as I give you that  
19 information-- I mean or you get it from the witness  
20 stand; excuse me, and my instructions. I will have  
21 further instructions for you.

22 BY THE BAILIFF: Will the alternate be able to  
23 come in? She wants to know if she will be able to  
24 come in when they start the testimony.

25 BY THE COURT: Yes, she will. She goes back in  
26 the, she will sit with the jury.

27 BY THE BAILIFF: Can she go back with them now?

28 BY THE COURT: Uh-hum. Sure can.

29 BY MR. HORAN: Judge, can we approach the bench?

1           **BY THE COURT:** Well, we are going to go to  
2 chambers. We are going to take about 30 minutes.

3           (NOTE: Upon further consideration by the Court  
4 and talking with Counsel for the State, the alternate  
5 juror was not placed with the rest of the jury but  
6 still kept in a separate room during all recesses on  
7 this date.)

8           (WHEREUPON, THE COURT, ALL COUNSEL, THE  
9 DEFENDANT AND THE COURT REPORTER WENT TO CHAMBERS OUT  
10 OF THE PRESENCE OF THE JURY FOR THE FOLLOWING:)

11           **BY THE COURT:** They said the Supreme Court said  
12 she can't go back in there. I will take a look. I  
13 have read that case. I don't think it said that, but  
14 we will look at it. What y'all want?

15           **BY MR. EVANS:** The only thing we were going to  
16 bring to the Court's attention was about the  
17 alternate not--

18           **BY THE COURT:** Okay. Well, we are going to  
19 start back in about 30 minutes.

20           **BY MR. EVANS:** Yes, sir.

21           **BY MR. BILLY GILMORE:** We have got one witness  
22 may be on the way up here, but maybe he will be here  
23 by then.

24           **BY THE COURT:** Okay, maybe they will.

25                               END CHAMBERS CONFERENCE  
26  
27  
28  
29

1 (FOLLOWING A RECESS ON OCTOBER 17, 1997, THE  
2 SENTENCING PHASE PROCEEDED AT 9:58 A.M. IN OPEN COURT  
3 WITH THE DEFENDANT PRESENT AND ALL JURY MEMBERS  
4 INCLUDING THE ALTERNATE PRESENT FOR THE FOLLOWING:)

5 BY THE COURT: Who will you have first?

6 BY MR. EVANS: Your Honor, before we proceed  
7 with the testimony in this case, the State would  
8 move to re-introduce all the exhibits and the  
9 testimony so that the jury might consider everything  
10 that they have previously heard on this phase of the  
11 trial.

12 BY THE COURT: Any objection?

13 BY MR. BILLY GILMORE: No objection.

14 BY THE COURT: That motion is sustained.

15 BY MR. EVANS: Roxanne Ballard will be our first  
16 witness.

17 BY MR. HORAN: And testimony.

18 BY MR. EVANS: Yes, sir, and all the testimony  
19 from the previous section.

20 BY THE COURT: Okay. That motion is sustained.

21 BY THE CLERK: Do I need to swear her in?

22 BY THE COURT: She was sworn earlier. She has  
23 testified.

24 BY MR. EVANS: May I proceed, Your Honor?

25 BY THE COURT: Yes, sir.

26 ROXANNE BALLARD,

27 a white female called to testify as a witness by the State of  
28 Mississippi on the Sentencing Phase, having been previously  
29 sworn and previously testified, testified here as follows,



1 to-wit:

2 DIRECT EXAMINATION BY MR. EVANS:

3 Q. Ms. Ballard, if you would, state your name again for  
4 the record, please.

5 A. Roxanne Miller Ballard.

6 Q. And you are the same Roxanne Ballard that has  
7 testified in the other phase of this trial; is that correct?

8 A. Yes.

9 Q. And I believe you have already testified that Bertha  
10 Tardy was your mother; is that right?

11 A. She is my mother, yes.

12 Q. Ms. Ballard, you know that the jury has already  
13 convicted the Defendant in the first phase, and this phase is  
14 simply for victim impact. I would like to ask you to explain  
15 to the jury what impact these murders at the store, the death  
16 of your mother has caused on your family?

17 A. It has had a tremendous impact, a very terrifying  
18 impact. It has changed all of us for the rest of our lives. I  
19 will never feel safe like I did before in Winona which is the  
20 reason we moved home, to be safe, to get out of the city. At  
21 the time this happened I was pregnant. I was eight weeks away  
22 from my due date with our second child, and we had a four year  
23 old who was very attached to his grandmother "BeBe." And every  
24 single day since then I have to answer his questions about why  
25 this happened, why God makes bad people, and what is going to  
26 happen to the person that did this to his grandmother.

27 As a result of all of this, my husband and I have  
28 both had to leave our jobs that we had and take over the  
29 furniture store because there was nobody left to do it. I have

1 had to start taking medication for anxiety and depression which  
2 I have to take every day. And when I try to wean myself off of  
3 it, it-- I can't do it because my nerves, I can't sleep if I  
4 don't take it.

5 I went into labor five weeks early with our second  
6 child after this all happened. I was under a lot of stress. I  
7 was having to try to do things for the store in the day and at  
8 night, trying to work at my job in the day, staying up all  
9 hours of the night trying to work on the store stuff and settle  
10 things of mother's, running to meetings with accountants trying  
11 to figure out what to do.

12 People ask me all the time how I went back in that  
13 store and ran it, but I didn't really have much alternative.  
14 So every day when Frank and I go in, we have to walk past all  
15 these spots that y'all have seen pictures of. I have to sit at  
16 my mama's desk to do her work, look at her handwriting every  
17 day.

18 Q. Ms. Ballard, is there anything else that you would  
19 like to be able to tell the jury?

20 A. This loss will never go away. We have lost more than  
21 just my mother. My child misses his grandmother terribly, and  
22 I don't have a big family because my mother, my grandmother and  
23 I were my whole life. Those are the people who took care of  
24 me, and now they are all gone. So all I have left to do is try  
25 to take care of my two children. I have my husband to support  
26 me, but I have no other family of my own left that I was close  
27 to or that helped raise me. I have nowhere to go for Christmas  
28 other than my husband's family. All those times are gone.  
29 There is nobody to ask about when I was a child because there

1 is nobody left.

2 I not only lost my mother, but I lost someone else  
3 who was very important to me for 20 years. And my child, at  
4 night Jeremy says, "Mama, I can't see Carmen's face any more.  
5 Do we have a picture of me with Carmen?" "Mama, I can't hear  
6 BeBe laugh any more. Can you laugh like my BeBe?" (Witness is  
7 crying.)

8 BY MR. EVANS: Your Honor, I tender the  
9 witness.

10 BY THE COURT: Any questions?

11 BY MR. BILLY GILMORE: No questions, Your Honor.

12 BY THE COURT: All right.

13 WITNESS STEPS DOWN.

14 BY THE COURT: Who will you have next?

15 BY MR. HORAN: Tom Tardy, Jr.

16 BY THE COURT: He has not been sworn.

17 TOM TARDY, III,

18 a white male called to testify as a witness by the State of  
19 Mississippi on the Sentencing Phase, having first been duly  
20 sworn by the Clerk, testified as follows, to-wit:

21 DIRECT EXAMINATION BY MR. HORAN:

22 Q. You are Tom Tardy, III?

23 A. That's correct.

24 Q. What is your relationship to Tom Tardy, Jr.

25 A. That's my father.

26 Q. What was the relationship to him and Bertha Tardy?

27 A. My father was married to Bertha Tardy.

28 Q. And how long were they married before she was killed?

29 A. They were married in April of 1994, so a little over

1 two years.

2 Q. How long has your father been a resident of the  
3 Winona area?

4 A. All of my life. My dad opened Tardy Furniture store  
5 in Winona right before he went into World War II, and it has  
6 been in Winona, Tardy Furniture Company every since. So he has  
7 been living in Winona; he went away for the war, and he came  
8 back, and that's what he has done all of my life.

9 Q. And at some point in time did he relinquish ownership  
10 to Tardy Furniture to Bertha at some point in time?

11 A. Yes, he did. When he turned 65 - that was back in  
12 1985 - he sold the store to Bertha. Bertha had worked there  
13 almost-- well, most of her adult life before then.

14 Q. And did he still frequent the store, go down there on  
15 a regular basis?

16 A. He was there every day or practically every day.  
17 Initially, I am sure he helped her with the business  
18 decisions. After a while, I think Bertha probably didn't need  
19 help in business decisions, but she allowed him to be there and  
20 look like he was helping.

21 Q. And she wanted him there?

22 A. Absolutely. It was, that store, Tardy Furniture  
23 Company, had been my dad's life.

24 Q. Where does he live now, Tom?

25 A. He lives at Graceland in Grenada which is an assisted  
26 care facility.

27 Q. And how long has he been there?

28 A. Well, he had lived in the same house in Winona from  
29 1953 or 1954 until a few months after these murders, and at

1 that time he had to go to Graceland.

2 Q. Why?

3 A. Well, he couldn't live in his old house any more for  
4 a lot of reasons. He was very scared. He has bad eyesight,  
5 and his hearing is not as good as it used to be. And he was  
6 afraid that somebody would come back for him, and I mean he is  
7 still afraid that somebody will come for him.

8 Q. As a result of Bertha's death, has he changed in any  
9 way mentally?

10 A. Well, he's, he cries a lot. As I said, he is very  
11 scared. He could not even go back to the house or live at the  
12 house for several weeks after the murders. He lived with my  
13 sister in Grenada. He is depressed, and he tried to live at  
14 the house for a while, and when he became too scared, he would  
15 call my sister and she would come get him. And after a while,  
16 he started having hallucinations. He would see people in the  
17 house. Some were, he thought good people, and some were bad  
18 people. Obviously, he thought the bad people were going to get  
19 him, and he started literally having conversations with people  
20 who weren't there, and making, crying a lot and making  
21 statements like he had nothing left to live for.

22 Q. Did all these problems transpire as a result of the  
23 loss of Bertha?

24 A. Oh, yes.

25 Q. How long were they married? I may have asked you  
26 that?

27 A. Well, they got married in April of '94.

28 Q. Would you describe the relationship Tom and Bertha  
29 had with each other, please, sir?

1           A. Well, it was difficult to have your dad marry  
2 somebody after my mother had died, but I quickly saw that this  
3 was the best thing that could have ever happened to my father  
4 given that he was going up in age, and he had problems with his  
5 eyesight and his hearing as I mentioned. And Bertha was the  
6 best companion that my father could have ever asked for. Since  
7 he could not see or hear extremely well, he couldn't read a  
8 newspaper, and so every night one of the first things they did  
9 when they came back from the store is Bertha would take the  
10 daily newspaper and would read it to him.

11           She allowed him to participate in the business. As I  
12 said, that was my father's life. He was a businessman and he  
13 was a good businessman. He did well. After he retired, he had  
14 to have some place to go, and the only place he had ever known  
15 was that store. So that's where he went, and almost every day  
16 he would go to that store. Bertha kept an office for him on  
17 one part of the store in the back on the right hand side.  
18 Bertha's office was in the back on the left hand side.

19           Bertha would allow him to participate in  
20 conversations by repeating what was said. He would not have  
21 been able to participate except Bertha told him what somebody  
22 else had said, and she knew how to communicate with him.  
23 Whereas every day conversation with people who aren't  
24 communicating with hearing impaired persons on a frequent  
25 basis, he could never have understood. So she was his eyes and  
26 she was his ears.

27           Q. You testified earlier that he was in a care center  
28 now. Did he go anywhere immediately after? Did he receive any  
29 treatment immediately after the murders?

1           A.   He did. After it became obvious that he was having  
2 more problems than he knew how to cope with and we knew how to  
3 help him with, he went to Charter Hospital down in Jackson, and  
4 he was treated there for mainly depression and the  
5 hallucinations.

6           Q.   And since he has moved to Graceland, have you noticed  
7 that his condition has deteriorated?

8           A.   It's, his memory is far worse than it was at the time  
9 of these murders, and part of it may be stress, but his memory  
10 is substantially worse. His short term memory is extremely  
11 bad. He can't remember a lot of names of people that he meets  
12 especially new folks. We repeat the same conversations over  
13 and over. He will ask the same question within two or three  
14 minutes of each other, and that's, he never did that before  
15 these murders. He was 75 or so, 75 or 76 when they happened,  
16 and he wasn't as sharp as he may have been when he was 45, but  
17 he was still pretty good and--

18          Q.   Do you attribute that to Bertha?

19          A.   I certainly do. I attribute it to the stress of what  
20 has happened to this family, to these families.

21                   BY MR. HORAN: I tender the witness.

22                   BY MR. BILLY GILMORE: No questions, Your Honor.

23                   WITNESS STEPS DOWN.

24                   BY THE COURT: Who do you have next?

25                   BY MR. EVANS: Sue Stidham.

26                   GLEND A SUE STIDHAM,

27 a white female called to testify by the State of Mississippi on  
28 the Sentencing Phase, having first been duly sworn by the  
29 Clerk, testified as follows, to-wit:



1     DIRECT EXAMINATION BY MR. EVANS:

2             Q.    State your name for the jury, please.

3             A.    Glenda Sue Stidham.

4             Q.    And where do you live?

5             A.    I live in Winona, Mississippi.

6             Q.    Ms. Stidham, did you know Bertha Tardy during her  
7 lifetime?

8             A.    Yes. I knew Bertha all of my life, but personally  
9 for the last six and a half years.

10            Q.    Are you personally familiar with the impact that her  
11 death has had on the community?

12            A.    Yes, sir; I am. I work for the Montgomery County  
13 Economic Council, and Bertha was a member, well, was always a  
14 member and was president when I was hired.

15            Q.    Would you explain to the ladies and gentlemen of the  
16 jury the impact that this death of Bertha Tardy has had on the  
17 community of Montgomery County?

18            A.    Yes. Bertha was part of the heart and soul of our  
19 community. Bertha always put the needs of the community before  
20 her personal needs. Bertha helped get our first habitat  
21 house. Bertha was concerned not only for the whole community,  
22 but she was concerned for the community for the personal  
23 people. She was a compassionate person. Bertha Tardy was the  
24 salt of the earth person. (Witness is crying.) There is not a  
25 week and most of the time there is not a day that doesn't go by  
26 that we don't have to dig in some records, or we don't have to  
27 try to run people down because that was something that Bertha  
28 had taken care of. It's a void that will never be filled  
29 because she was a person with the highest character and the



1 greatest concern for her community.

2 Q. Thank you.

3 BY MR. EVANS: Tender the witness, Your Honor.

4 BY MR. BILLY GILMORE: No questions, Your Honor.

5 BY THE COURT: Okay, you may return to the  
6 audience, please.

7 WITNESS STEPS DOWN.

8 BY MR. EVANS: Your Honor, the State rests.

9 STATE RESTS ON SENTENCING PHASE.

10 BY THE COURT: What says the Defense?

11 BY MR. BILLY GILMORE: Call Lola Flowers.

12 LOLA FLOWERS,

13 a black female called to testify by the Defendant on the  
14 Sentencing Phase, having first been duly sworn by the Clerk,  
15 testified as follows, to-wit:

16 BY THE COURT: You may proceed. Well, first,  
17 state your name for the record, please.

18 BY THE WITNESS: Lola Flowers.

19 DIRECT EXAMINATION BY MR. BILLY GILMORE:

20 Q. Ms. Flowers, are you related to Curtis Flowers?

21 A. Yes, I am.

22 Q. What relation?

23 A. I am his mother. (Witness is about to cry.)

24 Q. Ms. Flowers, is there anything you would like to tell  
25 this jury?

26 A. Yes. I don't believe Curtis killed those people. If  
27 I had thought he did--

28 BY MR. EVANS: --Your Honor, I'm going to have  
29 to object. There is specific case law that does not

1 allow this type of testimony. The jury has already  
2 convicted him of this crime, and it is improper for a  
3 family member to get up now and say that they don't  
4 think he did it.

5 BY THE COURT: That is not what this is about.  
6 You will have to direct her testimony toward--

7 BY THE WITNESS:

8 A. --Well, I--

9 BY THE COURT: --mitigating factors in relation  
10 to sentence, Mr. Gilmore.

11 BY MR. BILLY GILMORE:

12 Q. Ms. Flowers, do you understand what the Court is  
13 saying?

14 A. Uh-hum.

15 Q. If you would, more or less tell us about the impact  
16 of the situation on you and your family.

17 A. I know the people that were-- families of the, the  
18 families of the victim were hurt, but we was hurt just as bad.  
19 We, if I had thought Curtis did something like that, I would  
20 have wanted him arrested because I would have been afraid. But  
21 I don't think so. I just wish they would really find the  
22 person that did it. Curtis-- the whole family has been upset.  
23 Nobody has been able to really eat or do anything for all this  
24 year. It has been rough. I just, I am just sorry. Curtis has  
25 never given us any problem to think that, you know, he was  
26 violent of any kind of way. I just don't know what else to  
27 say.

28 Q. Curtis, I believe, is 27 years of age at this time?

29 A. Yes, he is.

- 1 Q. Has he lived in the area around you all of his life?
- 2 A. Yes, he have.
- 3 Q. Been a good son?
- 4 A. He has been.
- 5 Q. Hasn't caused any family problems?
- 6 A. No, sir.
- 7 Q. No problems in the community?
- 8 A. No. He just happy and jolly, you know, joking around
- 9 all the time. Everybody, you know, love him and miss him.
- 10 Q. Okay. What about his church life?
- 11 A. Yes, sir. He go to church. He sings in a quartet.
- 12 You know, it is just -- he read the Bible. You know, we just
- 13 say our Bible study and everything.
- 14 Q. And does he attend church regularly there with the
- 15 family?
- 16 A. Yes, sir.
- 17 Q. You said he sings in a quartet?
- 18 A. Yes, sir.
- 19 Q. What part does he sing in the quartet?
- 20 A. Lead or just, you know, different parts.
- 21 Q. How long has he been singing in the quartet?
- 22 A. I don't know; 5 or 6 years; I'm not sure.
- 23 Q. Is this a gospel quartet?
- 24 A. Yes, sir. It is.
- 25 Q. Did he go around and sing to the various churches?
- 26 A. Right. Every Sunday he is in church somewhere.
- 27 Q. Is his father part of that group?
- 28 A. Yes, sir.
- 29 Q. What about his brother?

1 A. No, sir.

2 Q. His brother is not in it, okay. Is it kind of like a  
3 family group, or does it have other people?

4 A. Other peoples in the group too.

5 Q. This is a tragedy to your family too, isn't it, Ms.  
6 Flowers?

7 A. It is. It is.

8 Q. You want your son to live--

9 BY MR. EVANS: That is improper.

10 BY THE COURT: You have to just ask questions.  
11 You can't ask leading questions.

12 BY THE WITNESS:

13 A. Well, I just hope they spare his life.

14 BY THE COURT: Ms. Flowers, you can't answer it  
15 until he asks you a question.

16 BY MR. BILLY GILMORE:

17 Q. You are concerned about your son's life, aren't you?

18 A. I am.

19 Q. You are a typical mother, aren't you?

20 A. Yes, sir.

21 Q. Now how many children do you have, Ms. Flowers?

22 A. Six.

23 Q. Okay, they all live in the Winona area?

24 A. All except one. She live in Texas.

25 Q. Okay, is this the one that Curtis said he went to  
26 live with for a while?

27 A. Yes, sir.

28 Q. Have you ever had any problem with any of your other  
29 children?

1 A. No, sir.

2 Q. You have heard the victim's family testify about the  
3 hurt they are going through. Is your family going through a  
4 hurt?

5 A. Yes, sir. Since then I have had to start taking high  
6 blood pressure medicine. It is just-- (Witness is crying;  
7 Pause.) It has just been hard every day every since.

8 Q. Are you asking for the mercy for your son?

9 A. Yes, sir; I am. Please have mercy on him.

10 BY MR. BILLY GILMORE: Tender the witness, Your  
11 Honor.

12 BY MR. EVANS: One moment, Your Honor.

13 CROSS-EXAMINATION BY MR. EVANS:

14 Q. Ms. Flowers?

15 A. Yes, sir.

16 Q. Curtis is your son; is that right?

17 A. That's right.

18 Q. And he has lived with you all of his life growing up?

19 A. Yes, sir.

20 Q. Was he living with you when he was 15 years old?

21 A. Yes, sir.

22 Q. You have told this jury that you, Curtis has given  
23 you no reason to believe he was violent; is that right?

24 A. That's right.

25 Q. Well, do you remember when he was 15 years old and he  
26 shot James D. Townsend?

27 A. Because they were playing with the guns. It's not  
28 like he just shot him for doing nothing. Both of them had the  
29 gun.

1 Q. You do remember when he shot James D. Townsend when  
2 he was 15 years old?

3 A. Yes, I do.

4 Q. Yet you say he has given you no reason to believe--

5 BY MR. BILLY GILMORE: --Your Honor--

6 BY MR. EVANS:

7 Q. --he was violent--

8 A. --Right, he haven't--

9 BY MR. BILLY GILMORE: --I'm going to object to  
10 this line of questioning.

11 BY THE WITNESS:

12 A. --because they say they were playing with the gun.

13 BY THE COURT: --Wait just a minute; wait just a  
14 minute, Ms. Flowers.

15 BY MR. EVANS: Wait until the Court rules.

16 BY MR. BILLY GILMORE: She has testified it was  
17 an accident. The DA is indicating it was a  
18 shooting. It is improper.

19 BY THE COURT: Well, he is entitled to question  
20 her about it, and she is entitled to answer it the  
21 best she can.

22 BY MR. EVANS:

23 Q. In that accident as you called it, would you agree  
24 with me that what happened was that your son pointed a gun at  
25 James D. Townsend and said, "I'm going to shoot you," and  
26 pulled the trigger shooting him in the chest?

27 A. No, I would not.

28 Q. Ma'am?

29 A. Uh-uh, no, I would not agree with you with that.

1 Q. And then told him not to tell anybody he shot him?

2 A. I don't know that. I wasn't home.

3 BY MR. EVANS: I don't have any further  
4 questions, Your Honor.

5 BY THE COURT: Redirect.

6 REDIRECT EXAMINATION BY MR. BILLY GILMORE:

7 Q. The incident that Mr. Evans talked to you about,  
8 there was no court action ever taken against your son, was it?

9 A. No, they haven't. He went and they ruled that it was  
10 an accident, and they put him on six months probation. The  
11 Judge that handled the case said he was doing this so they  
12 couldn't come back and do anything else to him because he had  
13 talked to James and all them, and said when he got 18 and no  
14 more trouble, that that should never be brought up again.

15 BY MR. BILLY GILMORE: No further questions.

16 BY THE COURT: You may return to the audience.

17 WITNESS STEPS DOWN.

18 BY THE COURT: Who do you have next?

19 BY MR. BILLY GILMORE: Archie Flowers, Sr. --  
20 Jr., I believe.

21 BY THE COURT: There is two of them. I don't  
22 know whether this one was sworn or not.

23 BY MR. BILLY GILMORE: Well, he was on the  
24 witness list.

25 BY MR. JOHN GILMORE: He was sworn.

26 BY MR. BILLY GILMORE: He was sworn, Your  
27 Honor.

28 ARCHIE FLOWERS,

29 a black male called to testify as a witness by the Defendant on

1 the Sentencing Phase, having been previously sworn, testified  
2 as follows, to-wit:

3 BY MR. BILLY GILMORE: May I proceed, Your  
4 Honor?

5 DIRECT EXAMINATION BY MR. BILLY GILMORE:

6 Q. State your name, please.

7 A. Archie Flowers.

8 Q. Okay, are you a Junior or Senior?

9 A. Senior.

10 Q. Senior. I believe you have a son, Archie Flowers,  
11 Jr.?

12 A. Well, he is not a junior. His name is Archie Renaldo  
13 Flowers.

14 Q. Now are you related to Curtis Flowers?

15 A. That's my son.

16 Q. Okay, how many children do you have?

17 A. Six.

18 Q. And Lola Flowers is your wife?

19 A. Yes, sir.

20 Q. Okay, now your wife testified about a church group or  
21 singing group. Are you a member of that group?

22 A. That's right.

23 Q. And what type group is it?

24 A. Gospel group.

25 Q. And how long have you been singing in the gospel  
26 group?

27 A. Maybe about 25 years or more.

28 Q. How long has Curtis been singing in the group?

29 A. Oh, about 5 or 6 years or more. He probably been



1 there longer than that.

2 Q. Now your wife testified y'all were a pretty popular  
3 group. You sing every Sunday or most every Sunday?

4 A. Every Sunday, Saturday too.

5 Q. Now Mr. Flowers, have you ever had any trouble out of  
6 your son?

7 A. No, sir.

8 Q. Tell the jury whether or not this thing has had an  
9 impact on you and your family?

10 A. Well, it really have. And we are sorry what  
11 happened, but it's not like that he did it or nothing like  
12 that. I don't believe he did it. I am saying that I pray for  
13 the peoples that God will show them the truth, and it is really  
14 hurting me and I am sure it hurt others. And that's all I need  
15 to say. (Witness is about to cry.)

16 BY MR. EVANS: No questions.

17 BY THE COURT: Mr. Flowers, you may return to  
18 the audience.

19 WITNESS STEPS DOWN.

20 BY THE COURT: Who do you have next?

21 BY MR. BILLY GILMORE: Connie Moore.

22 BY THE COURT: (Pause) Is she in the courtroom?  
23 Connie Moore. Do you want to step outside, Mr.  
24 Gilmore, and see if you can find her?

25 (Bailiff steps outside courtroom.)

26 BY THE BAILIFF: No, Your Honor.

27 BY MR. BILLY GILMORE: She is here.

28 (Mr. Gilmore walks to back of courtroom and  
29 talks in crowd of people.)

1 BY MR. BILLY GILMORE: Your Honor, we will pass  
2 her for the time being. She is not able to testify  
3 right now.

4 BY THE COURT: Okay.

5 BY MR. BILLY GILMORE: Call Robert Merritt.

6 ROBERT EARL MERRITT,  
7 a black male called to testify as a witness by the Defendant on  
8 the Sentencing Phase, having first been duly sworn by the  
9 Clerk, testified as follows, to-wit:

10 BY THE COURT: Mr. Merritt, have a seat up here.  
11 State your name for the record.

12 BY THE WITNESS: Robert Earl Merritt.

13 DIRECT EXAMINATION BY MR. BILLY GILMORE:

14 Q. Mr. Merritt, where do you live?

15 A. In Winona.

16 Q. And how long have you lived there?

17 A. About all my life.

18 Q. Okay, are you employed there in that area?

19 A. I am employed at Heatcraft in Grenada.

20 Q. What kind of job is that? Factory or?

21 A. A factory job.

22 Q. Okay. Mr. Merritt, do you know Curtis Flowers?

23 A. Yes, I do.

24 Q. How do you know him?

25 A. I know him as a kind person. I have been knowing him  
26 every since I have been about ten years old.

27 Q. Y'all grow up together?

28 A. Growed up together.

29 Q. Y'all go to school together?

1           A.    Went to school together.

2           Q.    Okay. Do y'all have any activities you participate  
3 in now together?

4           A.    Well, you know--

5           Q.    --prior to this incident.

6           A.    Curtis and I, we started singing in a gospel group  
7 back in '87, you know, about ten years. Curtis is a kind  
8 person to me, you know. I just don't think he would do a thing  
9 like that, you know. I know we used, we used to go to  
10 rehearsals, you know. We used to sing, you know. I just never  
11 did think Curtis would do a thing like that, you know.

12          Q.    Do you attend church with Curtis?

13          A.    Well, I have went to church. You know, we have, I  
14 have visited his church with him, you know, but we don't belong  
15 to the same church.

16          Q.    Don't belong to the same church, okay. Now Mr.  
17 Flowers testified he also was in the group. Do y'all pretty  
18 well sing every weekend?

19          A.    Well, most of the weekends we do, you know.  
20 Sometimes I don't feel, I didn't feel like going. You know, he  
21 would talk me into going, and I go on anyways unless I don't  
22 feel like it, but mostly we sing every weekend.

23          Q.    The fact that Curtis has not been there to sing, has  
24 that disrupted the group?

25          A.    Well, to me it did, you know, when he don't be there  
26 because he is a good lead singer.

27          Q.    And this is a gospel singing group?

28          A.    Yes, sir.

29          Q.    You say Curtis is a kind, caring person?

1 A. To me he was kind, kind person.

2 Q. You have known him pretty well all your life?

3 A. All my life.

4 Q. Do you feel like this jury should consider mercy for  
5 him?

6 BY MR. EVANS: That is not proper.

7 BY THE COURT: No, sir.

8 BY MR. BILLY GILMORE: Tender the witness.

9 BY MR. EVANS: No questions.

10 BY THE COURT: Mr. Merritt, you may have a seat  
11 back in the courtroom.

12 BY MR. BILLY GILMORE: Court indulge me one  
13 minute. Let me check the other witness.

14 (Mr. Gilmore walks to the back of the courtroom  
15 briefly and then returns.)

16 BY MR. BILLY GILMORE: Your Honor, I had  
17 previously called Ms. Connie Moore, but she is unable  
18 to testify because of the situation. So we would  
19 rest.

20 BY THE COURT: You rest?

21 BY MR. BILLY GILMORE: Yes, sir.

22 DEFENDANT RESTS ON SENTENCING PHASE.

23 BY THE COURT: All right. Does the State have  
24 anything further?

25 BY MR. EVANS: No, Your Honor.

26 BOTH SIDES FINALLY REST.

27 BY THE COURT: Ladies and gentlemen, I once  
28 again must go to chambers and discuss -- I have  
29 instructions for you in this phase of the trial like

1 we did at the last. I must go and talk to the  
2 attorneys about that. It'll take about like it did  
3 before, probably about, well, hopefully about 30  
4 minutes. Then I will call you back, give you the  
5 instructions. They will get to argue their side of  
6 the case to you, and then I will turn it over to you  
7 for deliberation. We are going to bring your lunch  
8 in today, so we will have you some food here in a  
9 minute.

10 Wait a minute. Ms. Alexander has to go in a  
11 different room.

12 (WHEREUPON, THE COURT, DEFENSE COUNSEL, THE  
13 DEFENDANT, AND THE COURT REPORTER WENT TO CHAMBERS  
14 FOR THE FOLLOWING:)

15 BY THE COURT: While y'all are doing that, Mr.  
16 Flowers, you have discussed with your attorneys  
17 testifying at this portion of the trial, have you  
18 not?

19 BY THE DEFENDANT: Yes, I have.

20 BY THE COURT: After those discussions, do you  
21 wish to testify?

22 BY THE DEFENDANT: No, sir.

23 BY THE COURT: You understand, you have a right  
24 to if you want to?

25 BY THE DEFENDANT: Yes.

26 BY THE COURT: Okay.

27 BY MR. BILLY GILMORE: Your Honor, for the  
28 record too, we did discuss this with Mr. Flowers, and  
29 he felt like, and he maintains his innocence, and he

1           felt like that he couldn't get on and show remorse  
2           for this because there is nothing to be remorseful  
3           over because he maintains his innocence.

4           **BY THE COURT:** Okay.

5           (STATE'S COUNSEL ENTERED CHAMBERS AND FOLLOWING  
6           AN OFF THE RECORD DISCUSSION AT MR. BILLY GILMORE'S  
7           REQUEST CONCERNING WHAT THE POSSIBLE PENALTIES IN  
8           THIS CASE WOULD BE - LIFE, LIFE WITHOUT PAROLE, OR  
9           DEATH - THE FOLLOWING DISCUSSION ENSUED WHICH THE  
10          REPORTER BEGAN TAKING AS FOLLOWS:)

11          INSTRUCTION NO. SS-1: **BY THE COURT:** Let me ask you  
12          this. I know the answer to it, but since the statute-- that is  
13          not what the statute says. Y'all are basing that opinion on  
14          the fact that there is no parole any more? The statute gives  
15          three options.

16                **BY MR. BILLY GILMORE:** We take the position  
17          there is three options.

18                **BY MR. HORAN:** That's right. Well.

19                **BY MR. BILLY GILMORE:** Do you want us to take  
20          this and rework it?

21                **BY MR. EVANS:** No, look in the pocket part,  
22          Judge. That is not--

23                **BY THE COURT:** --This '97 pocket part doesn't  
24          have any change.

25                **BY MR. EVANS:** There is only two options after--

26                **BY MR. HORAN:** October 1, '94. That's what we  
27          ran into with Ilene. There were three options then.

28                **BY THE COURT:** There is the option-- I mean  
29          there is the penalty. There it is right there. And that is a

1 '97 pocket part. Let's see what this says. The pocket--

2 BY MR. HORAN: --Here we go right here. This is  
3 it. They have changed it July 1. That's right. The law  
4 changed to include it, and we had Ilene going to trial--

5 BY THE COURT: --Yeah, I think it's in there--

6 BY MR. HORAN: --with sentencing after that  
7 date.

8 BY THE COURT: We put it in Hart Turner's  
9 because this is the one I used.

10 BY MR. EVANS: Okay.

11 BY THE COURT: We will look-- let me pull this  
12 up.

13 BY MR. HORAN: Give me that form that goes with  
14 it. We will change the form.

15 BY THE COURT: Wait a minute; do you want me to  
16 make sure?

17 BY MR. HORAN: Yes, sir.

18 BY MR. EVANS: I thought there was a specific  
19 section, Your Honor, that said life in capital cases was  
20 without parole.

21 BY THE COURT: Well, I would be glad to look at  
22 it, but it is other than this statute.

23 BY MR. HORAN: I think that is making-- show  
24 that to Judge Morgan.

25 (Off the record briefly).

26 BY THE COURT: I think there is just two  
27 possible options because there is no parole. If you commit  
28 regular murder, there is no parole. Isn't that right? You  
29 can't get parole.

1 BY MR. BILLY GILMORE: When did that go into  
2 effect?

3 BY THE COURT: It was after '94. I mean it was  
4 before this case.

5 BY MR. HORAN: Why won't we just put life  
6 imprisonment?

7 BY MR. BILLY GILMORE: We would like to have the  
8 three options.

9 BY THE COURT: Well, what he is saying; they  
10 have three options, just let the other one be life in prison  
11 and don't include the parole part.

12 BY MR. HORAN: Right.

13 BY THE COURT: The parole part is not part of  
14 the sentence anyhow really.

15 BY MR. HORAN: They are saying that effectively,  
16 I see--

17 BY THE COURT: They are saying forget what the  
18 statute says; you can't-- there aren't but two options. And I  
19 think they are right on that. The question is whether we are  
20 going to jumble up this case--

21 BY MR. HORAN: --we will give them three  
22 options.

23 BY THE COURT: --about giving three options.

24 BY MR. HORAN: The statute says give them three  
25 options. What they do about parole is not our, as far as what  
26 the MDOC or Legislature does about parole, you don't have any  
27 control over that.

28 BY THE COURT: Says, imprisonment for life to  
29 the penitentiary-- eligible for parole. What is 47-7-3? See



1 if that is the one they changed. (Pause) That doesn't help  
2 me.

3 BY MR. EVANS: If you really wanted to look at  
4 it, it would be life without parole, life without parole, or  
5 death.

6 BY THE COURT: I think that's the option; that's  
7 right.

8 BY MR. BILLY GILMORE: That isn't what the  
9 statute says. I mean the law may--

10 BY MR. EVANS: --Well, it is if you read both  
11 statutes because the other statute says life on capital murder  
12 does not carry parole.

13 BY THE COURT: (Pause) Let me put this on the  
14 record. The law also states that I am not, I am prohibited  
15 from giving instructions that are misleading to the jury, and  
16 if I give an instruction that says he is eligible for parole, I  
17 have misled the jury. And if there is another statute that is  
18 controlling and says there is no-- which statute is that?

19 BY MR. EVANS: 99-19-- well, let's see. 47-7-3  
20 (1)(e).

21 BY THE COURT: I don't believe that's it. I  
22 will look.

23 BY MR. EVANS: According to this, that is anyone  
24 that is convicted of capital murder would not be eligible for  
25 parole.

26 BY THE COURT: All right, this is off the  
27 record-- well, no, it's not either. This can be on the  
28 record. Here is what as amended, 47-7-3 (1)(e) says, "No  
29 person shall be eligible for parole who on or after July the

1 1st, 1994, is charged, tried, convicted and sentenced to life  
2 imprisonment without eligibility for parole pursuant to the  
3 provisions of Section 99-19-101." Now under that, let's see  
4 what 99-19-101 said because under that, he has got to have  
5 three options.

6 BY MR. EVANS: Your Honor, also look at "f" and  
7 "g."

8 (Pause while Court reads.)

9 BY MR. HORAN: Here are the other ones, Judge.  
10 Is that the sentencing instruction they brought back in here?

11 BY THE COURT: Off the record.

12 (Off the record briefly).

13 BY THE COURT: Here is what it says. "No person  
14 shall be eligible for parole who on or after July the 1st,  
15 1994, is charged, tried, convicted and sentenced to life  
16 imprisonment without eligibility for parole under the  
17 provisions of Section 99-19-101," which, of course, is the  
18 section that provides for the sentencing phase of the trial.  
19 All right, if you just read that one, that would indicate that  
20 that would still be a three option. The next paragraph says,  
21 "No person shall be eligible for parole who is charged, tried,  
22 convicted, and sentenced to life imprisonment under the  
23 provisions of Section 99-19-101," which again, that effectively  
24 does away with parole. However, they didn't simply do that.  
25 And so I think the sentencing instruction ought to give three  
26 options and leave out the parole part. They can sentence him  
27 to life imprisonment, and it is effectively without parole. I  
28 understand that I am playing semantical games, but it doesn't  
29 matter.

1 BY MR. EVANS: I was just trying to figure out  
2 how the jury could be, how it could be explained to the jury.

3 BY MR. BILLY GILMORE: Well, let the  
4 instruction, it's the Court's instruction. That's--

5 BY THE COURT: --Well, the thing about it--

6 BY MR. BILLY GILMORE: --Let it go at that.

7 BY THE COURT: Your situation is this: There is  
8 no parole. That is the situation. And all they had to say in  
9 this statute was that there is not going to be any parole for  
10 any life sentence. That's all they had to say. They didn't  
11 have to go through all this junk with it, but they did. And  
12 you know, who knows; they might change their mind down the  
13 road, and if they do, there is a difference between it.

14 BY MR. BILLY GILMORE: Of course, on appeal they  
15 may rule otherwise. I mean who knows?

16 BY THE COURT: Well, I'm trying to not give them  
17 much to rule on if I can help it.

18 BY MR. EVANS: Just going to word it just Option  
19 1: Life; Option 2: Life without parole; and Option 3: Death  
20 penalty.

21 BY THE COURT: Yeah. I think that's a safe way  
22 to do it. I don't think we ought to have to do it that way,  
23 but I can't see any-- there is no prejudice to the Defendant  
24 with that instruction, I know. Okay.

25 BY MR. EVANS: Well, Your Honor, may I for the  
26 record, since the Defense Counsel is the ones that are  
27 requesting these three options be in there, I would like it  
28 clear in the record that the Defense Counsel are the ones that  
29 are asking that it be in there and that they waive any

1 procedural problems that might arise later by asking for all  
2 three options to be placed in the record.

3 (Defense Counsel confer.)

4 BY MR. BILLY GILMORE: Your Honor, I'm not going  
5 to waive any procedural defects or whatever he requested  
6 there. I think it is something if it comes up, the Supreme  
7 Court will have to decide on it, if it gets to that issue.

8 BY THE COURT: I'm going to give the instruction  
9 like we just said. Maybe they will write something on it to  
10 clear it up to say I don't have to do that any more. But I  
11 know it's not prejudicial to the Defendant to give that  
12 instruction, so we will give it.

13 Okay, y'all ready for me to start looking at some of  
14 this?

15 BY MR. EVANS: I think so. Have you got the  
16 sentencing instruction up there?

17 BY THE COURT: No, I have got mine. I don't  
18 think I have got yours. Is this mine, Linda? Yeah.

19 BY MR. BILLY GILMORE: I believe that's what he  
20 is working on out there now.

21 BY THE COURT: Okay, well, let's--

22 BY MR. BILLY GILMORE: --There is a two page  
23 form, I think is what he is working on.

24 BY MR. EVANS: I think you have got the one main  
25 one of the State's still--

26 INSTRUCTION NO. C-2: BY THE COURT: Okay, your SS-3 is  
27 the Court's C-2, so I'm going to give mine--

28 BY MR. BILLY GILMORE: You said SS-2, Judge, or  
29 3?

1                   BY THE COURT: SS-3, excuse me. I mean it's  
2 identical. So I am giving mine as Instruction number 2. I  
3 will refuse yours, or you can withdraw it. What do you want to  
4 do with it?

5                   BY MR. EVANS: Is this just a copy? I notice  
6 they are stamped filed too. You have got SS-2, 3, and 4 there?

7                   BY THE COURT: I have got 2, yeah. You know how  
8 Kevin is. He never puts anything in order. So I looked at  
9 SS-3 first. Do you want to withdraw it?

10                  BY MR. EVANS: Yes, sir.

11                  BY THE COURT: It's the one that says, "The  
12 Court instructs the jury that at this phase of the trial  
13 conducted for the purpose of."

14                  BY MR. EVANS: Yes, sir.

15                  BY THE COURT: Okay.

16                  (Instruction No. C-2 was given, and Instruction  
17 SS-3 was withdrawn.)

18                  INSTRUCTION NO. C-3: BY THE COURT: Okay, C-3 says, "The  
19 Court instructs the jury that for this phase of the trial, you  
20 shall select from among yourselves a foreman. In the event  
21 that you unanimously find that the Defendant shall suffer the  
22 penalty of death, the foreman shall cause the verdict to be  
23 written in the form and manner prescribed in Sentencing  
24 Instruction 1, and the foreman shall thereafter affix his or  
25 her signature to the verdict." Any problem with that? That is  
26 the law.

27                  BY MR. BILLY GILMORE: No problem.

28                  BY THE COURT: It is given.

29                  INSTRUCTION NO. C-4: BY THE COURT: Okay, I think both of

1 y'all have this counting instruction. That is my C-4. I am  
2 going to give mine. Are you going to withdraw yours?

3 BY MR. EVANS: Yes, sir. That is SS-2?

4 BY THE COURT: Yeah.

5 BY MR. BILLY GILMORE: What about ours?

6 BY MR. JOHN GILMORE: DS-6.

7 BY THE COURT: I will get-- I will remember  
8 yours. Let me get them-- I'm going to get confused if I don't  
9 watch out.

10 (Instruction C-4 was given; Instruction SS-2 was  
11 withdrawn.)

12 INSTRUCTION NO. SS-4: BY THE COURT: All right, y'all  
13 have got no objection to SS-4, do you?

14 BY MR. BILLY GILMORE: No objection.

15 BY THE COURT: I am giving it as Instruction  
16 number 5.

17 INSTRUCTION NO. DS-1: BY THE COURT: Okay, moving right  
18 along. Okay, DS-1 is the counting process instruction which I  
19 have already given. Y'all want me to refuse it, or you want to  
20 withdraw it?

21 BY MR. JOHN GILMORE: Withdraw.

22 BY MR. BILLY GILMORE: Withdraw it.

23 INSTRUCTION NO. DS-2: BY THE COURT: What do you say to  
24 DS-2?

25 BY MR. EVANS: I think this is covered in the  
26 instructions, Your Honor. I think when they get the form out  
27 there that has SS-1, it is going to include all of this in that  
28 same instruction.

29 BY THE COURT: Okay. I'm going to hold that one

1 until we take a look at SS-1.

2 BY MR. EVANS: Yes, sir.

3 (Mr. Horan leaves chambers.)

4 INSTRUCTION NO. DS-3: BY THE COURT: What do you say to  
5 DS-3?

6 BY MR. EVANS: Oh, okay. These aren't in order.

7 BY THE COURT: Well, I think you are right  
8 though about DS-2. I think it is going to be covered in SS-1.  
9 We will hold it. DS-3 is the one that is marked each  
10 individual and "individual" is underlined.

11 BY MR. EVANS: I think this also is going to be  
12 repetitious. Plus I don't like underlining anything and  
13 emphasizing any part of an instruction.

14 BY MR. BILLY GILMORE: Your Honor--

15 BY THE COURT: --Well, I can eliminate that part  
16 of it. Let's see if it's repetitious, okay.

17 BY MR. BILLY GILMORE: We have no problem with  
18 whiting out the underscore, but we would like to have--

19 BY THE COURT: --Well, if you white it out, you  
20 are going to underscore it.

21 BY MR. BILLY GILMORE: Well.

22 BY THE COURT: We will get it. Don't worry. We  
23 will work it out.

24 INSTRUCTION NO. DS-4: BY THE COURT: DS-4 is the one that  
25 starts "Curtis Giovanni Flowers."

26 BY MR. EVANS: I don't think that is proper. I  
27 think that instructions are going to instruct the jury what  
28 they have to find. I don't think there is any law that says  
29 that there should be an instruction given that there is any



1 presumption at this point. The State must prove beyond a  
2 reasonable doubt that the aggravating circumstances exist and  
3 that they outweigh any mitigating circumstances, and that's  
4 clearly what the law is.

5 BY THE COURT: Well, there is a presumption of  
6 innocence. Whether there is a presumption that you are  
7 entitled to some type of sentence, I don't know. I will be  
8 glad to look at some law if y'all have got it, but I don't know  
9 of any law that says that.

10 (Mr. Horan enters chambers; Hands copies to  
11 Defense and to Mr. Evans and to the Court.)

12 BY MR. BILLY GILMORE: I can always go back to  
13 my old fall back, Judge. We don't know of any law against it  
14 either.

15 BY THE COURT: Okay. I'm going--

16 BY MR. BILLY GILMORE: --I do think the  
17 presumption remains, and the burden is on the State  
18 throughout.

19 BY THE COURT: Well, there is a different  
20 presumption though. You are presuming the sentencing, and  
21 there is a difference between presumption of innocence.  
22 Presumption of innocence is guaranteed by the Constitution.  
23 Presumption of what type sentence you get, I don't--

24 BY MR. BILLY GILMORE: --Well, I think we have  
25 got a presumption here--

26 BY THE COURT: You are saying there is a  
27 presumption that there are no aggravating circumstances. You  
28 will just have to show me some law on that, or somebody will.  
29 I'm going to refuse it.



1 (Instruction DS-4 was refused.)

2 INSTRUCTION NO. DS-5: BY THE COURT: Have you got any  
3 problem with DS-5?

4 BY MR. EVANS: I don't think it's necessary. I  
5 think it may to some extent be confusing. I think the Court's  
6 instructions--

7 BY THE COURT: --Well, I have already given the  
8 instruction on the guilt phase. So I mean it's a proper  
9 instruction. I did that without any objection. I don't know  
10 that it's, I don't know how it applies to the sentencing phase,  
11 but it says nothing that is not correct, and I'm going to give  
12 it. That will be number 6.

13 INSTRUCTION NO. DS-6: BY THE COURT: All right. Wait a  
14 minute y'all have got me confused. Here. Hold that. It looks  
15 like y'all have got two counting instructions.

16 BY MR. BILLY GILMORE: We do, Judge. We will  
17 withdraw that one also. They are similar; they are not the  
18 same, but they are similar.

19 INSTRUCTION NO. DS-7: BY MR. BILLY GILMORE: I do see  
20 with a typo we have got in there we might ought to correct.

21 BY MR. EVANS: This is, I don't think, true  
22 statement of the law; plus it is confusing. The jury is  
23 clearly instructed on what they must find before they can  
24 impose the death penalty.

25 BY THE COURT: Okay, my main objection to it is  
26 the last sentence. They do not always have the option to  
27 sentence him to life imprisonment. They are charged with the  
28 duty if you prove it beyond a reasonable doubt and use the  
29 balancing tests that is involved in the first instruction.

1 BY MR. HORAN: They can still give the death  
2 penalty.

3 BY THE COURT: I mean they are required to if  
4 they find it beyond a reasonable doubt.

5 BY MR. EVANS: They may if they find all of  
6 that.

7 BY MR. HORAN: They may; it's not shall. It's  
8 they may, but that instruction tells them still-- it's still an  
9 improper instruction.

10 BY MR. BILLY GILMORE: I think they do have the  
11 option, I mean.

12 BY MR. HORAN: That is telling them to disregard  
13 the other Court instruction.

14 BY MR. EVANS: The Sentencing instruction  
15 clearly instructs them on what the law is.

16 BY THE COURT: I think it does too. I think it  
17 thoroughly discusses what they have to do and gives them what  
18 their options are, and I'm going to refuse DS-7.

19 INSTRUCTION NO. DS-9: BY MR. EVANS: DS-9, I don't think,  
20 is a true statement of the law. Before they have to consider  
21 anything--

22 BY MR. BILLY GILMORE: --What about 8?--

23 BY MR. EVANS: --they have to find--

24 INSTRUCTION NO. DS-8: BY THE COURT: Yeah, DS-8.

25 BY MR. EVANS: 8? I don't think to start with  
26 it's a correct statement of the law. It's not a true statement  
27 of the law that the State of Mississippi still carries the  
28 burden of proof of showing not only an aggravating  
29 circumstances but that those circumstances are sufficient to

1 warrant death. The law goes further. We have got to show that  
2 there are aggravating circumstances, and we have got to show  
3 that those aggravating circumstances outweigh any mitigating  
4 circumstances, and all of that is argument that will be  
5 instructed--

6 (The Clerk enters chambers.)

7 BY THE CLERK: --The food is here.

8 BY THE COURT: Okay, you can go ahead and  
9 deliver it to them.

10 BY THE CLERK: Can we let them go ahead and  
11 eat?

12 BY THE COURT: Yeah. Yeah, do that.

13 BY THE CLERK: Okay, I have a huge food tray.  
14 Do we need to let our alternate just fix her--

15 BY THE COURT: Fix her one.

16 BY THE CLERK: Fix her one.

17 BY THE COURT: Why don't you let her go ahead  
18 and fix hers and then deliver the rest of them to--

19 BY THE CLERK: --take it back there; okay.

20 BY THE COURT: Okay.

21 BY MR. BILLY GILMORE: Your Honor, I think that  
22 is a true statement of the law.

23 BY THE COURT: Well, as far as it goes, it is,  
24 but it does not include -- the test is put forth in the Court's  
25 first instruction on sentencing. It tells them exactly what  
26 they have to do. And there are no reasons for any additional  
27 instructions other than that on what they have got to do and  
28 how they balance it. I refuse it. At least none that have  
29 been submitted to me; I will put it that way.

1 (Instruction DS-8 was refused.)

2 INSTRUCTION NO. DS-9: BY THE COURT: DS-9, those factors  
3 are included in the sentencing instruction.

4 BY MR. EVANS: Yes, sir.

5 BY THE COURT: I'm going to refuse it as-- as a  
6 matter of fact, I think that DS-9 now does not have all the  
7 mitigating factors that are in the first one. Where is that--  
8 what did you do with my instruction?

9 BY MR. HORAN: Sentence instruction?

10 BY THE COURT: Yeah.

11 (Instruction handed to the Court; Pause).

12 BY THE COURT: Well, I'm sorry. It does not.  
13 I'm going to refuse DS-9 because those mitigating factors are  
14 included in C-1.

15 (Instruction No. DS-9 was refused.)

16 BY MR. EVANS: Do you have all of yours? I am  
17 missing a page.

18 BY THE COURT: I have got two, three and four.  
19 Yeah, I have got it.

20 BY MR. EVANS: Okay, I am missing page-- I have  
21 got four pages. Okay, they are out of order.

22 BY MR. BILLY GILMORE: He didn't put the third  
23 option in the new one he typed up.

24 BY THE COURT: Y'all want us to do it? I have  
25 got one in the computer over here. Show me what you are going  
26 to do. We can print it out right now. Let me see it.

27 BY MR. HORAN: We will have to put a bunch of it  
28 in there. You are going to have to change everything. All he  
29 has got to do is do two words in it.

1 BY THE COURT: Okay, well, let's get it done.

2 BY MR. BILLY GILMORE: That's the only page you  
3 are going to change?

4 BY MR. HORAN: That's right.

5 BY THE COURT: DS-9 is refused as repetitious.

6 (Off the record while an instruction was  
7 redone.)

8 INSTRUCTION NO. SS-1: BY THE COURT: In line with what we  
9 have done on this, this says, "If none of these aggravating  
10 circumstances are found to exist, the death penalty may not be  
11 imposed, and you shall write the following verdict on a sheet  
12 of paper: We, the jury, find that the Defendant shall be  
13 sentenced to life imprisonment without parole." Well, we have  
14 given them another option.

15 BY MR. EVANS: Oh, great.

16 BY MR. BILLY GILMORE: That has got to be added  
17 too. That is what I was just pointing out to Walter. That has  
18 got to be added too.

19 BY MR. HORAN: What page?

20 BY THE COURT: Second page.

21 BY MR. BILLY GILMORE: Page 2 of 4.

22 BY THE COURT: Now before you send it off, we  
23 are going to look the whole thing over.

24 BY MR. HORAN: Okay, I am going to change that.

25 BY THE COURT: You ought to put--

26 BY MR. HORAN: --I have got to change 2.

27 BY THE COURT: What are you changing?

28 BY MR. HORAN: Well, right here it says next--  
29 I'm going to change what you told me to change too, but it

1 says, "Next to return the death penalty, you must find the  
2 mitigating... which tend to warrant the less severe penalty of  
3 life imprisonment without parole." I have got to add that. I  
4 have got "less severe penalties."

5 BY MR. BILLY GILMORE: You have got to put  
6 another complete penalty down there, a paragraph, I guess, you  
7 are going to have to add in.

8 BY THE COURT: Well, I think when you come to  
9 the form of the verdict, it ought to be "or" in the middle of  
10 the page and then another verdict on.

11 BY MR. BILLY GILMORE: May I ask something?

12 BY THE COURT: Yes.

13 BY MR. BILLY GILMORE: Of course, they have this  
14 down here: "We, the jury, are unable to agree unanimously on  
15 punishment." Will there be any instruction to the jury as to  
16 what would happen if that happens?

17 BY THE COURT: Well, I haven't read-- let me  
18 read the whole instruction, and I will be able to talk about it  
19 better.

20 BY MR. EVANS: May not.

21 BY THE COURT: Well, go ahead and make your  
22 changes and let me have it. I want to read all of it. Let's  
23 get the thing changed.

24 BY MR. HORAN: You tell me how you want this.

25 BY THE COURT: I thought I did.

26 BY MR. HORAN: Well, he has got to put both  
27 options in there.

28 BY THE COURT: All right. If none of these  
29 aggravating are found to exist, the death penalty may not be

1 imposed, and you shall consider one of the following verdicts,  
2 or you shall write one of the following verdicts on a sheet of  
3 paper. Write that part, and then I will tell you the rest of  
4 it.

5 BY MR. HORAN: All right. Shall mark one of the  
6 following verdicts on the form provided to you.

7 BY THE COURT: Okay.

8 BY MR. HORAN: Come here, Walter.

9 BY THE COURT: I'm not through.

10 BY MR. HORAN: I have got the other verdict in  
11 there, and I have got the "or" in there too. That's what you  
12 wanted, wasn't it?

13 BY THE COURT: Uh-hum. Let me go ahead and read  
14 the rest of it.

15 (Pause while Court reads.)

16 BY THE COURT: Now what was it that you asked  
17 me, Billy, about what else was it you asked me about this  
18 instruction?

19 BY MR. BILLY GILMORE: Look at the bottom  
20 sentence there, Judge.

21 BY THE COURT: Which page?

22 BY MR. EVANS: The last option.

23 BY MR. BILLY GILMORE: Are you going to instruct  
24 them as to what happened if they cannot agree?

25 BY THE COURT: No. I don't think I have to.  
26 If they can't do that, it's up to me. Not that I have a lot of  
27 options, but it's up to me.

28 BY MR. HORAN: Do you want "or" in between  
29 these, or you just want "or" in the--

1 BY THE COURT: Let me see it back.

2 BY MR. HORAN: I don't necessarily think there  
3 needs to be an "or" in between those.

4 BY THE COURT: No.

5 (Mr. Horan confers with Mr. Bleck about how to  
6 retype the instruction. Off the record.)

7 INSTRUCTION NO. DS-2: BY THE COURT: While he is doing  
8 that, let's see. What do you say to DS-2?

9 BY MR. BILLY GILMORE: I thought we were  
10 through.

11 BY MR. EVANS: Again, I think this is  
12 repetitious. I think the sentencing instruction informs them  
13 on how to view aggravating and mitigating circumstances.

14 BY THE COURT: I think it does. It's refused.

15 INSTRUCTION NO. DS-3: BY THE COURT: I don't really have  
16 too much problem with S-3 if we do something about the  
17 individual thing.

18 BY MR. BILLY GILMORE: With D-3?

19 BY THE COURT: Didn't I say DS? I thought I  
20 said DS-3. That's what I meant to say.

21 BY MR. BILLY GILMORE: I just heard the "S"  
22 part.

23 BY THE COURT: DS.

24 BY MR. EVANS: As long as it doesn't have  
25 anything emphasized in it, I don't--

26 BY MR. BILLY GILMORE: --You are talking about  
27 taking the underscore out?

28 BY MR. EVANS: Yeah.

29 (Off the record while the Court Reporter



1 reprinted Mr. Gilmore's DS-3 instruction taking out the  
2 underline on the word "individual.")

3 BY THE COURT: Okay, since we are going to  
4 change that, I'm going to mark this one withdrawn, and we are  
5 going to substitute it. We are going to substitute a new DS-3  
6 for this one. Let's make it DS-3A.

7 BY MR. BILLY GILMORE: We can make it DS  
8 whatever the last number is.

9 BY THE COURT: Whatever, it doesn't matter; just  
10 something so we can identify what I did.

11 (Off the record; Mr. Horan returns with  
12 corrected sentencing instruction).

13 BY THE COURT: Okay. That looks okay to me. Do  
14 you want to look at this?

15 BY MR. EVANS: Let us copy that.  
16 (Off the record).

17 BY MR. JOHN GILMORE: There is nobody there to  
18 file it.

19 BY THE COURT: The last D without the  
20 "individual" is now number 7.

21 BY MR. BILLY GILMORE: Ours is number 7?

22 BY THE COURT: Yeah, that was DS-3, wasn't it?

23 BY MR. JOHN GILMORE: Yeah.

24 BY THE COURT: Okay.

25 INSTRUCTION NO. SS-1: BY MR. EVANS: I found another  
26 problem.

27 BY MR. HORAN: What?

28 BY MR. EVANS: On the first line of the  
29 sentencing instruction.

1 BY MR. HORAN: Have you got the sentencing  
2 instruction?

3 BY MR. EVANS: Yeah.

4 BY THE COURT: That's right. It doesn't have  
5 three options.

6 BY MR. HORAN: That ain't the right one; he  
7 changed it.

8 BY MR. EVANS: That is the one he just handed  
9 me.

10 BY THE COURT: That is the one you just handed  
11 me.

12 BY MR. BILLY GILMORE: That's the one he went  
13 out to change, the first page.

14 BY MR. HORAN: No, he has changed the second  
15 page.

16 BY MR. EVANS: It's in there in several places.

17 BY THE COURT: It says, "You must now decide  
18 whether the Defendant will be sentenced to death or life  
19 imprisonment without parole." That ain't going to get it.

20 BY MR. HORAN: He has already changed that once.  
21 That's the first change that he changed.

22 BY THE COURT: Well, I can't help that. This  
23 one--

24 BY MR. BILLY GILMORE: --He forgot to change it  
25 on his computer out there.

26 BY THE COURT: Forgot to save it, yeah.

27 BY MR. EVANS: Be right back.

28 (Mr. Evans leaves chambers and then returns with  
29 Sentencing Instruction SS-1. The Court marks it as Given and

1 numbers it as Instruction No. 1.)

2 BY THE COURT: Well, do this form of the  
3 verdict.

4 BY MR. HORAN: You have got to put whatever  
5 instruction number you just numbered the sentencing  
6 instruction.

7 BY THE COURT: If you want to put this in your  
8 computer, it will always be number 1. Let's attach this by  
9 paper clip.

10 (FOLLOWING THE COURT AND COUNSEL TAKING A NOON  
11 RECESS, THE TRIAL RESUMED IN OPEN COURT AT 1:05 P.M. WITH THE  
12 COURT, ALL COUNSEL, THE DEFENDANT, AND THE JURY INCLUDING THE  
13 ALTERNATE PRESENT:)

14 BY THE COURT: Ladies and gentlemen, as I told  
15 you and as you already know, at the end of the case I  
16 give you the instructions on the law, and then the  
17 attorneys will argue their case to you. These are  
18 the instructions on the law that I give you that  
19 apply to this portion of the trial. The first one is  
20 a detailed instruction, and you need to read it  
21 carefully when you-- you need to read them all  
22 carefully when you make your deliberations, but it is  
23 going to have some specific instructions about how  
24 you go about your deliberations, and you want to read  
25 it carefully when you get in there.

26 "You have found the Defendant guilty of the crime of  
27 capital murder. You must now decide whether the Defendant will  
28 be sentenced to death, life imprisonment, or life imprisonment  
29 without parole. In reaching your decision, you may objectively

1 consider the detailed circumstances of the offense for which  
2 the Defendant was convicted, and the character and record of  
3 the Defendant himself. You should consider and weigh any  
4 aggravating and mitigating circumstances, as set forth later in  
5 this instruction, but you are cautioned not to be swayed by  
6 mere sentiment, conjecture, sympathy, passion, prejudice,  
7 public opinion or public feeling.

8 To return the death penalty in this case, you must  
9 first unanimously find from the evidence beyond a reasonable  
10 doubt that one or more of the following facts existed: That  
11 the Defendant actually killed Bertha Tardy; That the Defendant  
12 attempted to kill Bertha Tardy; That the Defendant intended the  
13 killing of Bertha Tardy take place or; That the Defendant  
14 contemplated that lethal force would be employed.

15 Next to return the death penalty, you must find the  
16 mitigating circumstances - which tend to warrant the less  
17 severe penalties of life imprisonment or life imprisonment  
18 without parole - do not outweigh the aggravating circumstances  
19 which tend to warrant the death penalty.

20 Consider only the following elements of aggravation  
21 in determining whether the death penalty should be imposed:  
22 The capital offense was committed for pecuniary gain during the  
23 course of an armed robbery; The Defendant knowingly created a  
24 great risk of death to many persons.

25 You must unanimously find, beyond a reasonable doubt,  
26 that one or more of the preceding aggravating circumstances  
27 exists in this case to return the death penalty. If none of  
28 these aggravating circumstances are found to exist, the death  
29 penalty may not be imposed, and you shall mark one of the

1 following verdicts on the form provided.

2 'We, the jury, find that the Defendant should be  
3 sentenced to life imprisonment' or 'We, the jury, find that the  
4 Defendant should be sentenced to life imprisonment without  
5 parole.'

6 If one or more of the above aggravating circumstances  
7 is found to exist beyond a reasonable doubt, then you must  
8 consider whether there are mitigating circumstances which  
9 outweigh the aggravating circumstances. Consider the following  
10 elements of mitigation in determining whether the death penalty  
11 should be imposed:

12 Whether the Defendant has no significant history of  
13 prior criminal activity; The age of the Defendant at the time  
14 of the crime; Any other matter, any other aspect of the  
15 Defendant's character or record, and any other circumstance of  
16 the offense brought to you during the trial of this cause which  
17 you, the jury, deemed to be mitigating on behalf of the  
18 Defendant.

19 If you find from the evidence that one or more of the  
20 preceding elements of mitigation exist, then you must consider  
21 whether it or they outweigh or overcome any aggravating  
22 circumstances you previously found. In the event that you find  
23 that the mitigating circumstance or circumstances do not  
24 outweigh or overcome the aggravating circumstance or  
25 circumstances, you may impose the death sentence." You should  
26 find the mitigating-- "Should you find the mitigating  
27 circumstances outweigh or overcome the aggravating  
28 circumstances, you shall not impose the death sentence.

29 The verdict you return must be written on a separate

1 sheet of paper signed by the foreman. Your verdict should be  
2 written in one of the following forms:

3 'We, the jury, unanimously find from the evidence  
4 beyond a reasonable doubt that the following facts existed at  
5 the time of the commission of the capital murder charged:  
6 Here you are to list or itemize all facts found, if any, from  
7 the list under Section A of this instruction which you  
8 unanimously agree exist in this case beyond a reasonable doubt.

9 Next, we the jury unanimously find that the  
10 aggravating circumstances of:

11 And you should list or itemize all of the aggravating  
12 circumstances presented in Section B of this instruction which  
13 you unanimously agree exist in this case beyond a reasonable  
14 doubt.

15 And that those exist beyond a reasonable doubt and is  
16 sufficient to impose the death penalty and that there are  
17 insufficient mitigating circumstances to outweigh the  
18 aggravating circumstances, and we further find unanimously that  
19 the" jury "should suffer death." There is a line for the  
20 foreman of the jury to sign.

21 "We, the jury, find that the defendant should be  
22 sentenced life imprisonment." There is a line for the foreman  
23 of the jury to sign.

24 "We, the jury, find that the defendant should be  
25 sentenced to life imprisonment without parole." And there is a  
26 line for the foreman of the jury to sign.

27 "We, the jury, are unable to agree unanimously on  
28 punishment." And there is a line for the foreman to sign.

29 "The Court instructs the jury that at this phase of

1 the trial conducted for the purpose of determining the sentence  
2 to be imposed upon the defendant, the state and the defendant  
3 may elect to stand on the testimony and evidence introduced  
4 during the first or guilt phase of this trial, or the parties  
5 may elect to introduce additional testimony and evidence as to  
6 matters relating to any of the aggravating or mitigating  
7 circumstances. In reaching your verdict, you may consider the  
8 testimony and evidence presented during the first phase of the  
9 trial together with the testimony and evidence, if any,  
10 relating to any of the aggravating or mitigating circumstances  
11 presented for your consideration during the second or  
12 sentencing phase of the trial.

13 The Court instructs the jury that for this phase of  
14 the trial, you shall select from among yourselves a foreman.  
15 In the event that you unanimously find that the defendant shall  
16 suffer the penalty of death, the foreman shall cause the  
17 verdict to be written in the form and manner prescribed in  
18 Sentencing" information one and-- "Instruction 1, and the  
19 foreman shall thereafter affix his or her signature to the  
20 verdict.

21 The Court instructs the jury that it must be  
22 emphasized that the procedure that you must follow is not a  
23 mere counting process of a certain number of aggravating  
24 circumstances versus the number of mitigating circumstances.  
25 Rather, you must apply your reasoned judgment as to whether  
26 this situation calls for life imprisonment or whether it  
27 requires the imposition of death, in light of the totality of  
28 the circumstances present.

29 The Court instructs that you, as individual jurors,



1 must consider mitigating circumstances. Therefore, even if all  
2 other eleven jurors find that a certain mitigating circumstance  
3 does not exist, if you believe it does exist, you must find  
4 that mitigating circumstance, and weigh it in your further  
5 deliberations.

6 First and foremost, you must render a decision based  
7 on the evidence free from prejudice or passion. Evidence  
8 includes the sworn testimony of witnesses, exhibits admitted  
9 into evidence, any facts that were judicially noted and any  
10 facts that were stipulated to by the parties. It is your  
11 recollection of the evidence that controls, not mine and not  
12 the attorneys. Arguments of counsel are not evidence.

13 Each individual juror must decide for himself or  
14 herself whether death or life in prison is the appropriate  
15 punishment for Curtis Giovanni Flowers. Only if each and every  
16 juror finds beyond a reasonable doubt that death is the only  
17 appropriate punishment may you impose the sentence of death."

18 The forms discussed in Instruction number 1, this is  
19 a form that reflects those things that are in Instruction  
20 number 1 and may be helpful to you when you reach your verdict  
21 and you write it out.

22 Let the argument proceed, 30 minutes to the side.

23 BY MR. HORAN: Your Honor, could I have a one  
24 minute warning, please, sir?

25 BY THE COURT: There is a clock right there.  
26 You will have to keep up with it.

27 FINAL ARGUMENT BY MR. HORAN:

28 Ladies and gentlemen, as the Court told you, I only  
29 have fifteen minutes to talk to you about this phase of the



1 trial.

2 The first thing I want to do is talk a little bit  
3 about Bertha Tardy. What kind of person was she? She was the  
4 kind of person that would hire somebody, not knowing him very  
5 well, not really knowing much about him, loan him 30 bucks  
6 before he ever even got his first paycheck. That's the kind of  
7 person Bertha Tardy was. She was the kind of person that cared  
8 for other people more than she cared for herself. Tom Tardy,  
9 III testified that she took care of his father, did everything  
10 for him; the testimony that she took care of her community.  
11 She was a valuable piece of the City of Winona, and it's a  
12 tragic loss.

13 We are not here to consider the penalty on the other  
14 three. But apparently she thought enough of Sam Jones to take  
15 his opinion when she hired Mr. Robert Golden, just on his word  
16 hired a man she apparently didn't even know, hired him to come  
17 work for her primarily because the Defendant wouldn't show up  
18 for work, wouldn't do his job. She hired a young boy by the  
19 name of BoBo Stewart, 16 year old boy, been there two days,  
20 summer job, trying to build his character, trying to be  
21 somebody, trying to be a valuable asset to his community  
22 because this man over here, he wouldn't be that kind of  
23 person.

24 If the Defendant would have gone to his job and done  
25 the things that Ms. Tardy wanted him to do, those four people  
26 probably wouldn't be dead today. But he was not that kind of  
27 person. He was the kind of person that really didn't care. He  
28 exacted his revenge on Bertha Tardy on July the 16th, 1996, and  
29 what he did, the things that he did to pay her back for the

1 kindness that she showed to him was to shoot her through her  
2 head and kill her dead on the spot in her own furniture store,  
3 a place that she had taken over from Mr. Tardy and started on  
4 her own, a place that she helped people. She helped her  
5 community. That man over there didn't really care about that.  
6 All he cared about was killing her for two reasons: Because  
7 she let him go and he knew that there was some money down there  
8 that he wanted, and he got it.

9 Now ladies and gentlemen, this sentencing  
10 instruction, you heard the Court read it to you. It is pretty  
11 complicated, but after you read it and you read it more than  
12 once, if you need to, it's pretty simple. The steps are  
13 simple; maybe the instruction is a little complicated.

14 Under "A" you have to find certain things before you  
15 spring board into Sections "B" and "C." That is the simplest  
16 way I can put it. You have to find beyond a reasonable doubt  
17 that the Defendant actually killed Bertha Tardy. You have  
18 overwhelming proof that that occurred. Number 2: The  
19 Defendant attempted to kill. That doesn't apply because he  
20 did, in fact, kill her. Number 3: That the Defendant intended  
21 that Bertha Tardy be killed or that the killing of Bertha Tardy  
22 take place. We know that. We know he walked in that store,  
23 and he pulled that gun out and he pulled that trigger,  
24 that .380 automatic that he took out of Doyle Simpson's car,  
25 and killed her. And finally, that the Defendant contemplated  
26 that lethal force would be employed. Well, when he left his  
27 house that morning, he went down to Angelica and got that gun,  
28 and when he left there and went back home and when he waited  
29 for that store to open and go down, and went down there and

1 shot her, no doubt in y'all's mind and my mind either one that  
2 he intended lethal force be employed.

3 Now what that means is once you make a finding under  
4 "A," once y'all find beyond a reasonable doubt that any one of  
5 those four exists, then y'all go to "B." And what "B" tells  
6 you is, is that the things that are called aggravating  
7 circumstances that allow you to consider whether or not the  
8 Defendant should receive the death penalty, and there are two  
9 of those. The first one: That the Defendant did this crime  
10 for the purpose of gaining something, pecuniary gain, for  
11 monetary gain, and we know that. And I submit to you, ladies  
12 and gentlemen, we don't know exactly how much Curtis Flowers  
13 took that day. We know there was some money in there. I wish  
14 more than anything that Carmen Rigby could have come in here  
15 and testified today or yesterday or the day before and said,  
16 you know, I am the bookkeeper. There is a terrible thing that  
17 happened to Ms. Tardy, but I know when we opened up that  
18 morning, we had this much money. I came back; this much was  
19 gone. See, the reason we can't do that is because that man put  
20 a bullet through her head. But we do know there was money  
21 taken based on the testimony of Roxanne Ballard.

22 If you find that beyond a reasonable doubt, you  
23 consider the next one: Whether or not the Defendant knowingly  
24 created a great risk of death to other persons. Did he do  
25 that? Yes, he did because he killed three other people. Not  
26 only did he create a risk of death to other persons, he killed  
27 other persons.

28 BY MR. BILLY GILMORE: Object, Your Honor.

29 There is no proof to that.

1                   BY MR. HORAN: Your Honor, I think that is  
2                   reasonable inference that can be drawn.

3                   BY THE COURT: You can't go into that.

4 BY MR. HORAN:

5                   The Defendant knowingly created a great risk of death  
6                   to other persons. If you find that, then you go to the  
7                   mitigating factors. You can consider anything in mitigation on  
8                   behalf of the Defendant, his character, his background, or  
9                   whatever, and then you look at those things. You compare them  
10                  to the aggravating circumstances, and if the mitigating factors  
11                  do not outweigh the aggravating factors, the appropriate  
12                  sentence, the State contends, is that you impose the death  
13                  penalty.

14                  Now ladies and gentlemen, you may think that is a  
15                  cold and calculating way to do this, and to a certain extent it  
16                  is. But that's what the law in Mississippi is: That you are  
17                  to go through Section A, make your findings, go through Section  
18                  B, make your findings, consider "C," make your findings. And  
19                  then what you do is you are going to have to go back to "A"  
20                  once you consider that. You look at "B" and "C," and if the  
21                  mitigating factors that the Defendant placed into evidence here  
22                  today, his proof here today does not outweigh the aggravating  
23                  factors, then you have every right under the law in this state,  
24                  under the law in this state to impose the death penalty.  
25                  That's what you have to do.

26                  Now the Defense Counsel stood up here and asked  
27                  witnesses about mercy. And I submit to you, ladies and  
28                  gentlemen, this Defendant deserves no mercy. What mercy did he  
29                  give Bertha Tardy? Did he give her any mercy? You give him

1 exactly, exactly the scintilla of mercy today that he gave  
2 Bertha Tardy. And if you do that, if you do that one thing for  
3 me and that one thing only, justice will be done. And if you  
4 do that, the only reasonable verdict in this case will be that  
5 you sign, the foreman of this jury will sign on this form that  
6 is attached that this Defendant right here get the death  
7 penalty. And I submit to you, ladies and gentlemen, there is  
8 no alternative.

9 Thank you.

10 BY MR. BILLY GILMORE: May I proceed, Your  
11 Honor?

12 BY THE COURT: Uh-hum.

13 FINAL ARGUMENT BY MR. BILLY GILMORE:

14 Ladies and gentlemen, again I only get to speak to  
15 you one time, and the District Attorney gets to speak to you  
16 twice. I'm not going into great detail like I did yesterday.  
17 Reasonable doubt goes also into this part of this trial.  
18 Reasonable doubt went throughout this whole trial, and it must  
19 also go throughout this phase of this trial. If there is any  
20 reasonable doubt in your mind, as the Court has instructed, you  
21 must give the lesser of the penalties.

22 Now you are here today sitting in judgment on one  
23 case and one case only. That is Ms. Tardy's death. You are  
24 not to consider what else may have happened. That will take  
25 care of itself.

26 Now the Court has told you about the aggravating  
27 circumstances and also told you about mitigating  
28 circumstances. Let's look at the mitigating circumstances -  
29 the State has pretty well gone over aggravating circumstances -

1 whether the Defendant has a history of prior criminal  
2 activity. There is none. Let's go even further. Testimony  
3 here shows that the man traveled and was a singer in a quartet  
4 that sung gospel songs. A man that does that is not all bad.  
5 You heard his mother and his father both testify about him  
6 attending church. A man that does that is not all bad.

7           The age of the Defendant is a mitigating  
8 circumstance. This man is 27 years of age. And of course, the  
9 other mitigating circumstances goes into the character of this  
10 man, and I have already gone into that a little bit. He  
11 attends church. I believe his father said they went every  
12 Sunday to sing in the churches and even on Saturdays. I don't  
13 believe anybody that has been painted a picture up here today,  
14 this week that did this would be out there singing gospel songs  
15 every Sunday.

16           We have presented our case. We felt like there is  
17 reasonable doubt. We still feel like there is reasonable  
18 doubt, and if you feel like there is reasonable doubt in this  
19 phase, then you must return one of the lesser penalties. Death  
20 is pretty certain. I believe the Bible says something about an  
21 eye for an eye. But most people don't read the rest of that.  
22 I think it says, the Lord says vengeance is mine.

23           Give this man a chance. I know Mr. Evans is going to  
24 say well, he didn't give Ms. Tardy a chance. Well, we can't  
25 help that now. It's unfortunate it happened, whoever killed  
26 Ms. Tardy, but this man's life is in your hands now. So I ask  
27 you not to take the attitude of an eye for an eye, a tooth for  
28 a tooth, or whatever the Bible says, but remember the second  
29 part of that Bible scripture where the Lord says, vengeance is



1 mine. Don't take vengeance on this man. Consider the less  
2 penalty. That's more than enough punishment.

3 I'm not going to take up a lot of your time. You  
4 have been here all week. You have been mighty attentive, and I  
5 think when you get back there, don't look at the gruesome  
6 crime. Look at the man. He is entitled to a day. He is  
7 entitled to tomorrow. If there is other people involved in  
8 this thing, they should be brought into it somewhere down the  
9 line, and we hope they will be, and we think they will be.  
10 Think about that. If he has already met his maker, it won't  
11 help him. But if he is in jail somewhere, and somebody comes  
12 forward, then he will have another day in court. Consider  
13 that.

14 Thank you.

15 FINAL ARGUMENT BY MR. EVANS:

16 Ladies and gentlemen, I'm not going to be very long  
17 on this because I think y'all have heard enough. There are a  
18 few things that I want to comment to you. Opposing Counsel  
19 says he is entitled to another tomorrow. Why is he entitled to  
20 another tomorrow when Bertha Tardy wasn't entitled to another  
21 tomorrow? For the last over a year he has been able to see the  
22 sun come up every day. Bertha Tardy hasn't been able to see  
23 the sun come up. He has been able to talk to his family.  
24 Bertha Tardy hasn't been able to talk to her family. Her  
25 rights stopped the day that he decided to put a bullet through  
26 her head. And that's when his rights should have stopped  
27 right there. He had absolutely no feeling for people in that  
28 store. He is a year older now, but the four people he killed  
29 aren't.

1           The law is clear in Mississippi. I'm not going to go  
2 back through the law, but it's exactly why on voir dire we went  
3 through this with y'all. It's why it was so important when  
4 y'all were sitting out here. We had to make sure on a death  
5 penalty case that anybody sitting in the box where y'all are  
6 would follow the Court's instructions. Each of you told us  
7 that you would. Those instructions are simple. If the law  
8 authorizes the death penalty and the facts justify it, each of  
9 you told us that you could give the death penalty. In this  
10 case the law clearly authorizes it. Mr. Horan went through the  
11 law with you. I'm not going to go back through that. All you  
12 have got to do is take that instruction, and you can go back  
13 through it real quick.

14           In this particular case there are two aggravators  
15 that we went through while ago. The pecuniary gain is strictly  
16 taking the money. The other factor is great risk of death to  
17 others, which is clearly there. Both of those are there. I  
18 have seen no mitigators that even touch them, but they don't  
19 have to touch them. What they have got to do, if the  
20 aggravators are there, unless the mitigating factors outweigh  
21 them, then the death penalty is still appropriate punishment.  
22 In this case the only, only possible appropriate punishment  
23 that you could give this Defendant is the death penalty.

24           This is probably the most brutal crime that our  
25 district has ever seen. You have seen the pictures. You saw  
26 how the crime was committed. Opposing Counsel says don't  
27 consider how the crime was committed. What else are you going  
28 to consider? That is what he did. He went in that store and  
29 he shot four people in the head, and he left them there dead.



1 BY MR. BILLY GILMORE: Object, Your Honor. Same  
2 objection. There is no proof.

3 BY MR. EVANS: Your Honor, that is an  
4 aggravating factor in this phase.

5 BY MR. BILLY GILMORE: No proof to that.

6 BY THE COURT: I'm not going to allow it. You  
7 just stick on with what I have consistently held  
8 through this trial.

9 BY MR. EVANS:

10 The aggravating factors, you will see in the  
11 instructions. The Court has told you what you may consider.  
12 In this particular case this Defendant showed how he felt by  
13 the facts of what he did, the facts that we have shown, and I'm  
14 not going to go back through them. Y'all have heard them  
15 several times. I simply ask that you do this: That you go  
16 back in the jury room; you take that instruction; you work your  
17 way through it. You fill in the factors out of Section A that  
18 apply. You go to Section B; fill out the two aggravating  
19 factors because they both apply. And you return a verdict of  
20 We, the jury, sentence the Defendant to death, and that form is  
21 filled in on the instruction. There is a place in there that  
22 the foreman must sign. And then you knock on the door and  
23 bring that verdict back out to the Judge and tell the Judge  
24 that you feel that this Defendant should be sentenced to  
25 death.

26 Thank you, Your Honor.

27 BY THE COURT: Let me see those instructions.  
28 Ladies and gentlemen, you are now entitled to retire  
29 and consider the verdict on this phase. Knock on the

1 door when you have done so, and the bailiffs will let  
2 me know, and we will bring you back in here for it.  
3 You can all retire except Ms. Alexander.

4 BY THE COURT REPORTER: Do they take the  
5 exhibits?

6 BY THE COURT: I don't know. Y'all want the  
7 exhibits again? If you do, send a message, okay. I  
8 will give them to you. Now Ms. Alexander can't go.

9 JURY RETIRES TO CONSIDER VERDICT ON SENTENCING  
10 PHASE AT 1:35 P.M.

11 BY THE COURT: We will be in recess until the  
12 jury reaches a verdict.

13 (ALTERNATE WAS EXCUSED AND COURT WAS IN RECESS  
14 AWAITING THE VERDICT OF THE JURY. UPON THE JURY  
15 KNOCKING, COURT WAS RECONVENED AT 2:25 P.M. WITH ALL  
16 COUNSEL AND THE DEFENDANT PRESENT FOR THE FOLLOWING:)

17 BY THE COURT: Let me see y'all up here.

18 (CONFERENCE AT THE BENCH AS FOLLOWS:)

19 BY THE COURT: I forget. Do they have to read  
20 all of that stuff about the verdict--

21 BY MR. HORAN: The Clerk does.

22 BY THE COURT: Well, I mean does she have to  
23 read from top to bottom? We find these such and  
24 such.

25 BY MR. HORAN: Right.

26 BY THE COURT: All right.

27 END BENCH CONFERENCE.

28 BY THE COURT: Chuck, we are going to need the  
29 clerk.

1                   (The Clerk, Ms. Loftin, enters the courtroom and  
2                   confers with the Court.)

3                   **BY THE COURT:** Once again, let me say what I  
4                   said before, and I know I don't have to. Just as a  
5                   precaution though, I will not allow any displays of  
6                   emotion one way or another, pleasure or displeasure,  
7                   at the reading of this verdict.

8                   JURY ENTERS THE COURTROOM AT 2:30 P.M.

9                   **BY THE COURT:** Ladies and gentlemen, have you  
10                  reached a verdict?

11                  **BY A JUROR:** Yes, we have, Your Honor.

12                  **BY THE COURT:** Is it the verdict of all twelve  
13                  of you?

14                  **BY SEVERAL JUROR:** Yes, sir.

15                  **BY THE COURT:** All right. Hand the verdict to  
16                  the bailiff.

17                  (Verdict handed to the Bailiff and then to the  
18                  Court.)

19                  **BY THE COURT:** The Defendant will rise. (To the  
20                  Clerk) Start right there.

21                  **BY THE CLERK:** Okay, and don't read what is in  
22                  the bracket?

23                  **BY THE COURT:** Don't read what's in the bracket.  
24                  Read everything else. Okay?

25                  **BY THE CLERK:** Okay. "Form of the Verdict for  
26                  Sentencing." "We, the jury, unanimously find from  
27                  the evidence beyond a reasonable doubt that the  
28                  following facts existed at the time of the commission  
29                  of capital murder charged: The defendant actually

1 killed Bertha Tardy. That the defendant intended the  
2 killing of Bertha Tardy to take place. That the  
3 defendant contemplated that lethal force would be  
4 employed. Next we, the jury, unanimously find that  
5 the aggravating circumstances of: The capital  
6 offense was committed for"--

7 **BY THE COURT:** Pecuniary.

8 **BY THE CLERK:** "Pecuniary gain during the course  
9 of an armed robbery; the defendant knowingly created  
10 a great risk of death to many persons." Do I read  
11 the rest of that?

12 **BY THE COURT:** Uh-hum.

13 **BY THE CLERK:** "Exist beyond a reasonable doubt  
14 and is sufficient to impose the death penalty and  
15 that there are insufficient mitigating circumstances  
16 to outweigh the aggravating circumstances, and we  
17 further find unanimously that the defendant should  
18 suffer death." Charles E. Rousseau, Foreman of the  
19 Jury.

20 **BY THE COURT:** Do you want the jury polled?

21 **BY MR. BILLY GILMORE:** Yes, Your Honor.

22 **BY THE COURT:** All right. Is this your verdict,  
23 sir?

24 **BY A JUROR:** Yes, sir.

25 **BY THE COURT:** Yours, sir?

26 **BY A JUROR:** Yes, sir.

27 **BY THE COURT:** Yours, ma'am?

28 **BY A JUROR:** Yes, sir.

29 **BY THE COURT:** Yours, ma'am?

1 BY A JUROR: Yes, sir.  
2 BY THE COURT: Yours, ma'am?  
3 BY A JUROR: Yes, sir.  
4 BY THE COURT: Yours, sir?  
5 BY A JUROR: Yes, sir.  
6 BY THE COURT: Yours, sir?  
7 BY A JUROR: Yes, sir.  
8 BY THE COURT: Yours, sir?  
9 BY A JUROR: Yes, sir.  
10 BY THE COURT: Yours, sir?  
11 BY A JUROR: Yes, sir.  
12 BY THE COURT: Yours, sir?  
13 BY A JUROR: Yes, sir.  
14 BY THE COURT: Yours, sir?  
15 BY A JUROR: Yes, sir.  
16 BY THE COURT: Yours, sir?  
17 BY A JUROR: Yes, sir.  
18 BY THE COURT: I find that the sentence-- I mean  
19 that the decision of the jury is unanimous. Mr.  
20 Flowers, the jury has heard this case. They have  
21 convicted you of capital murder. They have imposed  
22 the sentence of death. I order that that sentence be  
23 imposed upon you on November the 24th, 1997. You are  
24 remanded to the custody of the Sheriff.  
25 (The Defendant and Defense Attorneys leave the  
26 courtroom.)  
27 BY THE COURT: Ladies and gentlemen, y'all have  
28 had a long and difficult week. I want to tell you,  
29 give you the appreciation of the Court for your

1 diligence in performing your duties. You have been  
2 prompt; you have been on time, and you have obviously  
3 paid attention to what has gone on here today, and I  
4 appreciate your service very much. It has been my  
5 pleasure to serve with you. I doubt we will ever get  
6 to do that again, but I have enjoyed meeting you and  
7 serving with you. You are finally excused. You may  
8 take the jury out. Everybody wait until the jury is  
9 out.

10 (JURY LEAVES THE COURTROOM.)

11 BY THE COURT: All right. Ladies and gentlemen,  
12 the Court is adjourned.

13 TRIAL WAS ADJOURNED  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

1                   (ON NOVEMBER 4, 1997, COURT CONVENED IN ATTALA  
2 COUNTY, MISSISSIPPI, FOR POST TRIAL MOTION HEARING WITH  
3 JUDGE MORGAN PRESIDING AND WITH THE FOLLOWING PERSONS  
4 PRESENT: HON. DOUG EVANS, HON. KEVIN HORAN, AND HON.  
5 WALTER BLECK REPRESENTING THE STATE OF MISSISSIPPI; HON.  
6 JOHN GILMORE AND HON. BILLY GILMORE REPRESENTING THE  
7 DEFENDANT; THE DEFENDANT HIMSELF.)

8                   **BY THE COURT:** This cause is before the Court on  
9 a Motion for-- well, the Motion is for a Judgment of  
10 Acquittal Notwithstanding the Verdict or in the  
11 Alternative a New Trial. Mr. Gilmore.

12                   **BY MR. JOHN GILMORE:** Yes, Your Honor. In  
13 support of this Motion, one of the first things that, one  
14 of the first reasons we feel that you should enter a  
15 judgment of acquittal notwithstanding the verdict or in  
16 the alternative order a new trial be had in this matter  
17 was because of the Court failed to consolidate this case  
18 with the other three cases and also allowing evidence of  
19 those other crimes in this matter. By failing to  
20 consolidate them, you have violated his rights to a fair  
21 and impartial trial, violated his rights to a speedy trial  
22 on the other matter, on the other three cases. Also--

23                   **BY THE COURT:** --Now if we had consolidated  
24 them, all of that evidence would have been admissible in  
25 that trial for sure, wouldn't it?

26                   **BY MR. JOHN GILMORE:** That's right, Your Honor,  
27 but you failed to consolidate them, and then the other  
28 evidence was still let in. If you would have consolidated  
29 them, all of the trials would have been over with. He

1 would not have had-- his right to a speedy trial would not  
2 have been violated.

3 BY THE COURT: Do you have any authority to say  
4 I should have consolidated them?

5 BY MR. JOHN GILMORE: Well, the only authority I  
6 had was what I presented at the time of the motion. We  
7 feel that it was, although it may have been in your  
8 discretion, in the interests--

9 BY THE COURT: You are saying it was an abuse of  
10 discretion; right?

11 BY MR. JOHN GILMORE: Right, abuse.

12 BY THE COURT: Okay.

13 BY MR. JOHN GILMORE: Also, another reason for  
14 making a new judgment of acquittal or in the alternative  
15 of a new trial, was again, it was repeated references to  
16 the other killings, graphic pictures of the other, the  
17 victims. Although my client was not on trial for those,  
18 those murders, it was repeatedly referenced by the  
19 District Attorney's Office, went into detail about the--  
20 in one instance the age and impact on Derrick Stewart. We  
21 feel that that was-- it exceeded the bounds in this case.  
22 It should have only been evidence to the victim in this  
23 case which was Bertha Tardy.

24 Also, the Court erred in allowing the State to use  
25 its peremptory challenges to exclude all the African-  
26 Americans that were potential jurors from the jury pool.  
27 Although they did put forth some race neutral elements for  
28 precluding those, we do not feel that they were adequate  
29 in precluding them from serving on the jury.



1           Another error made by the Court, the Court did not  
2 allow us to call a crucial witness, Mr. Timothy Haymore.  
3 He would have put forth testimony that Mr. Veal, who made  
4 a, who was a witness for the State, made a statement of,  
5 that the Defendant confessed to him. He would have been  
6 able to put forth evidence and testimony that Mr. Veal  
7 intended on lying, told him beforehand that, you know, he  
8 was going to make up a story on somebody so that he could  
9 get out of jail even before he was put in the cell with  
10 our client.

11           You had also said that we did not have proper  
12 predicate laid for calling Mr. Haymore, and then in order  
13 to lay that proper predicate, you did not allow us a  
14 continuance to get Mr. Veal there so that we could lay the  
15 proper predicate. We feel that proper predicate was laid  
16 for Mr. Haymore to be called to rebut that testimony of  
17 Mr. Veal. If you would have granted a continuance,  
18 although we thought we had a proper predicate, we could  
19 have laid further predicate in order to call Mr. Haymore  
20 which would have been very damaging towards the testimony  
21 of the State.

22           The Court also erred, we feel, in not allowing a  
23 directed verdict at the end of the case in chief of the  
24 State because they failed to present and prove all the  
25 necessary elements of capital murder which included armed  
26 robbery. They failed to give adequate evidence that there  
27 was actually an armed robbery. They did not put forth any  
28 evidence that this Defendant committed an armed robbery or  
29 that he took any money at all.

1           The State also failed to prove that the armed robbery  
2 took place during the course of the murders or the murders  
3 took place in the course of the armed robbery, either  
4 way. We feel that one of the possible defenses was that  
5 someone else could have taken the money after the murders  
6 were complete.

7           We also feel that the weight of the evidence-- I mean  
8 the verdict was contrary to the weight of the evidence.  
9 Just about every one of their eye witnesses who said that  
10 they saw Mr. Flowers on the east side of 51 had him  
11 wearing different clothes. That was definitely  
12 inconsistent.

13           The Court also admitted illegal testimony in that  
14 testimony was admitted, as I said before, as to the other  
15 victims, the other crimes. The Court excluded competent  
16 and legal testimony by not allowing us to call Mr.  
17 Haymore. We also feel that the verdict of the jury was  
18 not based on the evidence as heard from the witness stand  
19 but based on prejudice and bias because of the  
20 inflammatory pictures that were allowed in, statements by  
21 the prosecution in their opening and closing statements  
22 that had absolutely nothing to do with the victim Bertha  
23 Tardy. Even though we repeatedly objected to testimony of  
24 the other victims coming in, they kept going into it, and  
25 it was allowed by the Court. We feel that that definitely  
26 prejudiced the client, our client.

27           I have nothing further, Your Honor.

28           BY MR. EVANS: One second, Your Honor.

29           BY MR. EVANS: Your Honor, very briefly in

1 response, as to count one, I think the Court has already  
2 clearly ruled on that following the law that is already  
3 set forth in this state that it was improper, once the  
4 Grand Jury had indicted these cases separately, to  
5 consolidate them. I think the Court properly left them  
6 separate as it should have.

7 As to count two, as to the other evidence of other  
8 crimes, to start with, the Court limited us drastically  
9 into going into anything that was not necessary to prove  
10 the event that occurred there. I think the Court at least  
11 two different occasions ruled that this other evidence was  
12 necessary evidence and that any prejudicial effect was  
13 outweighed by the probative value.

14 Also as to this, several of the necessary items that  
15 were brought up were brought up by the Defense. They  
16 brought up about different bullets, different types of  
17 bullets, things like that. It was necessary to explain  
18 these. The only photographs that were used were  
19 photographs of the scene to show what the officers found  
20 when they arrived at the scene. We did not even show a  
21 photograph of BoBo Stewart that had been removed from the  
22 scene. None of the autopsy photographs were used except  
23 for the one that we were trying. And even on that, we did  
24 not attempt to introduce anything except some very limited  
25 photographs that were not unduly prejudicial.

26 As to the challenges of the jurors, in this case the  
27 State only used 11 strikes. Even though the Court ruled  
28 that they had not met the burden of us having to go  
29 forward under Batson, the Court asked us if we would like

1 to go forward or asked us to go forward, and we did, in  
2 fact, go forward and give the reasons that we struck all  
3 of the jurors, not only the black jurors, but also the  
4 white jurors that we struck. And the Court, as the Court  
5 will well remember I am sure, found that every reason that  
6 we gave for striking any juror, whether it was a white  
7 juror or a black juror, was a race neutral reason.

8 As to the Court erring in not allowing the Defendant  
9 to call Timothy Haymore, I don't remember this Court ever  
10 telling them that they could not call Timothy Haymore as a  
11 witness. I made a motion in limine to preclude them from  
12 asking one specific question. This Court ruled on that  
13 motion alone and never told them that they could not call  
14 him as a witness. Also, there was only a brief synopsis  
15 of general ideas of what they intended to bring out. They  
16 never attempted to put him on the stand or lay, lay out  
17 any offer or proffer of what they expected him to  
18 testify. Also, we had furnished in discovery a statement  
19 of this witness to the Defense stating that the Defendant  
20 had asked him to lie to these facts that they were saying  
21 that he might say, and that he was telling us that he was  
22 not going to lie for him, that he was going to tell the  
23 truth in the matter. But none of that is before the Court  
24 because there was no proffer of him brought before the  
25 Court. But specifically, this Court did not at any time  
26 say that he could not testify as a witness.

27 As to count six, as to whether the Court allowed and  
28 erred in not allowing the Defendant a recess in order to  
29 secure the presence of Frederick Veal. Frederick Veal was

1 a witness that was subpoenaed by the State to testify. He  
2 did, in fact, testify. The Defense did, in fact, cross  
3 him, had an opportunity, if they wished or thought that  
4 this testimony would be brought out by Haymore, to bring  
5 it out. They did not attempt to ask him any questions,  
6 did not lay any predicate at all, and then told the Court  
7 that he could be released. So it could not be any error  
8 for not allowing them a continuance to bring back somebody  
9 that on information that was clearly before them, if they  
10 wanted to bring it out, that they had asked the Court to  
11 release.

12 Your Honor, the rest of these, I think, are very  
13 simple, and I don't have anything I would wish to add on  
14 any of the others.

15 BY THE COURT: Okay. Most of this stuff I have  
16 ruled on, of course, at trial.

17 BY MR. BILLY GILMORE: Your Honor, could I make  
18 a response to him?

19 BY THE COURT: Yes, sir.

20 BY MR. BILLY GILMORE: Your Honor, as far as, of  
21 course, the repeated references to the killings and  
22 murders; if the Court remembers, I believe even in the  
23 final arguments, I made two objections in the second  
24 phase.

25 BY THE COURT: I don't recall you moving for a  
26 mistrial though.

27 BY MR. BILLY GILMORE: No, sir.

28 BY THE COURT: Okay.

29 BY MR. BILLY GILMORE: But I made the objection

1 throughout.

2 BY THE COURT: And it was sustained.

3 BY MR. BILLY GILMORE: And as far as Haymore's  
4 testimony, I believe in chambers the Court ruled that Mr.  
5 Haymore would not be allowed to testify, and I believe the  
6 record will reflect that.

7 BY THE COURT: Of course, I don't-- my memory is  
8 not good enough to remember that. I doubt that I told you  
9 he could not testify. I probably sustained the motion in  
10 limine in relation to what that was. He might could have  
11 been called for other purposes. I am confident I didn't  
12 tell you he couldn't testify. I may have told you he  
13 couldn't testify on a particular point. But whatever, the  
14 record is-- I have ruled on that, and I will stand by that  
15 ruling.

16 BY MR. BILLY GILMORE: As far as the pictures,  
17 as the Court is well aware, that the body of Ms. Tardy was  
18 some, I guess 20 feet from the other bodies. And it was  
19 not necessary to show pictures of the other victims at  
20 that time. I mean this was not a part of the trial  
21 itself, and, you know, they could very easily have shown  
22 that picture if they needed the crime scene. It wasn't  
23 necessary to show the other victims' bodies, and we feel  
24 like that was done and did, in fact, prejudice the jury  
25 against the Defendant.

26 And Your Honor, if you-- I would ask you this. If  
27 you would, before you rule on this motion, in our final  
28 number 15, we have got other grounds may be shown on  
29 hearings. If you would reserve your ruling for a couple

1 of days, I think we will have something else that in  
2 itself might be sufficient to reverse this case, if you  
3 will give us a couple of days before you rule.

4 BY THE COURT: No, this matter is before the  
5 Court today. I'm going to rule on it today. You will  
6 just have to bring up whatever you have got later on some  
7 other motion. The Court finds-- I want to make one  
8 specific, one specific referral, and this is to paragraph  
9 6 about the recess in order, wanting a recess for  
10 Frederick Veal to testify. The reason he was not there to  
11 testify was totally done at the instigation of the  
12 Defense. They released him from subpoena. They chose to  
13 do that. They chose to take that chance when they did  
14 that. The Court was in the middle of a capital murder  
15 trial. The Defense had not subpoenaed this witness, and  
16 the Court gave them the opportunity to keep him even  
17 though they had not subpoenaed him, and they released  
18 him. Even after that, the Court issued an instantter  
19 subpoena I think on, I think that was on Wednesday maybe.  
20 Anyhow, it was on the day -- they had 24 hours in which to  
21 find him and could not find him. The Court issued the  
22 subpoena, just would not continue the trial on the basis  
23 that the Defense didn't subpoena their witness and then  
24 released him when he was there. I didn't do that; that is  
25 true.

26 BY MR. BILLY GILMORE: Your Honor, I believe  
27 that was on Thursday.

28 BY THE COURT: Anyhow, well, whatever. It was  
29 24 hours just about between the time that it was raised



1 and the time he would have been able to testify.

2 The Court finds that it has ruled on all of these  
3 matters at trial. The Court, in reviewing the Motion and  
4 in reviewing what he did at trial, finds that this Motion  
5 is not well taken and should be overruled. Somebody got  
6 an order to that effect?

7 BY MR. HORAN: I can draft one, Judge.

8 BY MR. BILLY GILMORE: We can supply one, either  
9 one, Judge. We did not bring one.

10 BY THE COURT: Okay. I will draw one this  
11 afternoon. Anything else on this Motion?

12 (HEARING CONTINUED AS FOLLOWS CONCERNING THE  
13 OTHER THREE CAUSE NUMBERS UNTIL STATE MADE FURTHER MOTIONS  
14 UNDER THIS CAUSE AS WILL BE SHOWN:)

15 BY THE COURT: Now this case is set for-- the  
16 next case is set for trial. All three of the next cases  
17 are set for trial on January 26, 1998, in Tupelo, Lee  
18 County, Mississippi. I intend to draw the jury on this  
19 case on Wednesday, December the 3rd, 1997. I will have my  
20 Court Administrator contact you as to the time we need to  
21 be in Tupelo for that. I direct the State to get me a  
22 writ to get the Defendant present in Tupelo on that  
23 particular date. I intend to issue, have the Clerk issue  
24 the summonses.

25 My initial intention is 450 jurors will be drawn,  
26 that they will send out the same questionnaire that we did  
27 before unless y'all have other things you want to add to  
28 it which must be done between now and December the 3rd.  
29 If I have not included it in my letter that I send to



1 jurors, I will instruct them on a specific date to have  
2 those questionnaires back. In doing that, I want both  
3 parties to understand I can't guarantee you that they will  
4 send them back, but I will do that to see if it will aid  
5 in getting them back on time. I intend for the summonses  
6 to go out no later than the 15th of December if Ms. Loftin  
7 can accommodate that date.

8 Now the State, y'all need to make an election. When  
9 is the State going to be able to make the election as to  
10 which case?

11 BY MR. EVANS: Your Honor, how about a week from  
12 today? Will that be soon enough?

13 BY THE COURT: Okay. That will be-- today is  
14 the 4th. That will be the 11th of November. I tell you  
15 what; y'all have got several orders to draw. Why don't  
16 you just draw me an order overruling the Motion for a New  
17 Trial on this. Now there is a motion, I believe, filed  
18 for a continuance of the other three cases until further  
19 order of the Court.

20 BY MR. HORAN: Yes, sir. I have an ore tenus  
21 motion, Your Honor, to move that they be continued, and I  
22 have an order here today to continue it until the 26th of  
23 January.

24 BY THE COURT: Okay. This Court has already  
25 entered its order setting all three of the next cases for  
26 January the 26th, and the basis of continuing it to those  
27 dates is that is the only, that is the first available  
28 date that they have in Tupelo that we can try this case.  
29 It is also, it precedes an 8 week term of court up there,

1       so it's the only week that we can get it tried within the  
2       next 6 months, the earliest possible date that we can do  
3       it. So the court docket dictates that it be set on the  
4       26th. Everybody will just have to clear their calendar  
5       for that particular date, for that week. I gather a week  
6       will be enough, will be enough allowance in this case for  
7       that case. That's what they have given us. We will go  
8       from there. Okay, what else?

9               BY MR. HORAN: Your Honor, I have two motions.  
10       I think the Court has a copy, and Counsel for the  
11       Defendant has a copy. I don't think there is any need to  
12       argue as to either one of those.

13              BY THE COURT: Motion to withdraw exhibits?

14              BY MR. HORAN: Yes, sir.

15              BY THE COURT: I guess you have got no objection  
16       to that, do you?

17              BY MR. BILLY GILMORE: Is this the exhibits they  
18       have used?

19              BY THE COURT: Well, it's the same exhibits. I  
20       gather, I am confident that the same exhibits or most of  
21       the same exhibits in the first trial will have to be used  
22       in the subsequent trials. There will be some difference  
23       because I would expect, without ruling on that at this  
24       point, I would expect probably maybe the autopsy picture  
25       of Ms. Tardy is probably not admissible in these other  
26       trials. There will be some variance, but basically they  
27       want to withdraw some of the exhibits from that trial to  
28       be used at this one. Since they are in the custody of the  
29       Clerk, I don't see where it could be--

1 BY MR. HORAN: --Some to be duplicated, Your  
2 Honor, and some to be withdrawn.

3 BY MR. BILLY GILMORE: Your Honor, at this  
4 point, of course, I anticipate there will be an appeal to  
5 the Supreme Court, and I am sure the Supreme Court may  
6 want to look at some of these exhibits.

7 BY THE COURT: Well, if they do, all they have  
8 got to do is send an order to Ms. Loftin, and she will  
9 send them down there.

10 BY MR. BILLY GILMORE: I just want to make sure  
11 they are available.

12 BY THE COURT: Well, she is charged by law with  
13 keeping them. That's all I can do.

14 BY MR. HORAN: The second Motion is to include  
15 in the transcript--

16 BY THE COURT: --They are not-- these exhibits  
17 are not going to automatically go to the Supreme Court.  
18 They are not-- they don't want them. I mean unless they  
19 request them, they will be in Lee County, Mississippi, in  
20 the custody of the Circuit Clerk.

21 BY MR. HORAN: Is that Motion granted, Your  
22 Honor?

23 BY THE COURT: Yes, sir.

24 BY MR. HORAN: The second Motion would be to  
25 include in the transcript the race and gender of all  
26 witnesses that testified at trial. That would be the  
27 guilt phase as well as the sentencing phase. Any  
28 objection to that?

29 BY THE COURT: The Court finds that especially

1 in light of the fact that Batson has been raised in this  
2 case, that that is, even though that relates to two  
3 different entities in the trial, I think it's an  
4 appropriate matter for informational purposes for the  
5 Supreme Court. The Court sustains that Motion, and I  
6 believe the context will be at the heading before each  
7 witness' testimony. When it identifies that witness, it  
8 will also identify that person by race and gender.

9 BY MR. HORAN: Your Honor, I had an order of  
10 continuance.

11 BY THE COURT: Okay.

12 BY MR. BILLY GILMORE: Your Honor, let the  
13 record reflect we are not agreeing to the continuance.

14 BY THE COURT: Yes, sir. I understood that.

15 BY MR. HORAN: I don't have it in there that  
16 y'all agreed.

17 (Court signs order.)

18 BY THE COURT: Anything else?

19 BY MR. BILLY GILMORE: Your Honor, we anticipate  
20 having several motions prior to December the 3rd, and I  
21 guess we will get with the Court between now and then  
22 about a time for hearing.

23 BY THE COURT: Well, of course, it just depends  
24 on what those motions are. I have ruled on a new trial.  
25 Once you file your notice of appeal, I have no  
26 jurisdiction over this case. Those motions, I think, will  
27 more appropriately be filed with the Supreme Court. You  
28 have got 30 days from today to file it, so that would be,  
29 the 3rd would be your last day, I guess.

1 BY MR. BILLY GILMORE: Well, some of these  
2 motions will be going toward the new trial also, trial or  
3 trials.

4 BY THE COURT: They will be due before the  
5 December the 3rd-- I mean you have to file this appeal  
6 within 30 days of this date.

7 BY MR. JOHN GILMORE: What he is talking about  
8 is motions on the other three cases.

9 BY THE COURT: Okay. My position is if you file  
10 the notice of appeal, if you perfect the appeal to the  
11 Supreme Court, I don't have jurisdiction.

12 BY MR. EVANS: Not on this case, Your Honor. He  
13 is talking about not the one we have already tried--

14 BY MR. BILLY GILMORE: --Your Honor--

15 BY THE COURT: What I was thinking he was  
16 talking about this other motion about some other matters.

17 BY MR. EVANS: No, sir. He is talking about  
18 some motions--

19 BY THE COURT: --I am sorry, Mr. Gilmore. I  
20 apologize.

21 BY MR. BILLY GILMORE: It will be probably some  
22 several motions filed for the other, one of the other  
23 three trials, whichever the State chooses, and we will  
24 probably wait until after they designate which trial. But  
25 meanwhile, we will be getting some several motions ready  
26 to be heard.

27 BY THE COURT: Okay. Do y'all know, y'all want  
28 me to set a deadline on when we have got to hear all that?

29 BY MR. EVANS: It doesn't matter to us, Your

1 Honor.

2 BY THE COURT: Well, I don't want it to get up--

3 BY MR. EVANS: It would be good if we had some  
4 deadline, but the date wouldn't matter to us.

5 BY MR. BILLY GILMORE: Could we look at it  
6 further down the line because I don't have a calendar here  
7 with me today anyhow?

8 BY THE COURT: I want them filed by January the  
9 1st and let's hear them by, no later than January 15th.  
10 How about that?

11 BY MR. BILLY GILMORE: Some of these motions  
12 probably need to be heard prior to December 3rd, Your  
13 Honor. But we will get them to you and let you look at  
14 them where you can make a determination on a hearing date.

15 BY THE COURT: Okay. That will be fine. Now  
16 that's only-- well, that is fine. Okay, that is fine.  
17 Anything else?

18 BY MR. BILLY GILMORE: No, sir. We would like  
19 to have at least an hour to confer with our client before  
20 he is transported.

21 BY THE COURT: Okay. I would like for him to  
22 have that hour.

23 BY MR. BILLY GILMORE: And also be access to the  
24 family too.

25 BY THE COURT: I don't know about that now.  
26 That is the Department of Corrections. You have got to  
27 get them to okay that, and I don't think they are going  
28 to. Court is adjourned.

29 HEARING OF NOVEMBER 4, 1997 ADJOURNED.

1 (ON NOVEMBER 14, 1997, COURT AGAIN CONVENED IN  
2 ATTALA COUNTY, MISSISSIPPI, BEFORE JUDGE CLARENCE E.  
3 MORGAN, III, CIRCUIT JUDGE, FOR POST TRIAL MOTION HEARING  
4 WITH THE FOLLOWING PERSONS PRESENT: HON. DOUG EVANS AND  
5 HON. WALTER BLECK REPRESENTING THE STATE; HON. JOHN  
6 GILMORE AND HON. BILLY GILMORE REPRESENTING THE DEFENDANT;  
7 AND THE DEFENDANT:)

8 (Motion handed by Defense Counsel to State's  
9 Counsel and to the Court.)

10 BY MR. JOHN GILMORE: May I proceed, Your Honor?

11 BY THE COURT: No. I need to read it first.

12 (Pause while the Court reads.)

13 BY THE COURT: Okay.

14 BY MR. JOHN GILMORE: Your Honor, this is a  
15 petition to allow the Defendant to proceed in forma  
16 pauperis. In prosecuting his appeal, he feels that his  
17 conviction and sentence were erroneous. He does not have  
18 the funds to proceed on the appeal. He has not worked  
19 since the first of '97, the end of '96. He has been in  
20 custody since January of '97. He has no property, no  
21 stocks, bonds, or assets of any kind whatsoever. He has  
22 been unable to come up with any funds to pay his attorneys  
23 or come up with the court costs for the appeal.

24 The Clerk's estimate of appeal is \$3,699.00. That  
25 includes the \$100.00 filing fee, the Court Clerk's cost,  
26 and the Court Reporter's cost. There is no way he can  
27 come up with that kind of funds for the court costs  
28 alone. When he hired us, he hired us solely for the  
29 purpose of one trial and not for an appeal. We have not

1       been paid anything for the appeal, and we ask that he be  
2       able to proceed in forma pauperis and that we be  
3       appointed to represent him on the appeal of cause number  
4       CR97-369.

5               BY THE COURT:   Have you got any authority for  
6       that?

7               BY MR. JOHN GILMORE:   Any authority?

8               BY THE COURT:   Uh-hum.   You have been retained  
9       to represent this man.   Have you got any authority to say  
10      I have got any right to appoint you now and let the county  
11      subsidize you?

12              BY MR. JOHN GILMORE:   I don't have any authority  
13      other than the fact that he has no funds to proceed on.

14              BY THE COURT:   But you have been paid, Mr.  
15      Gilmore.

16              BY MR. JOHN GILMORE:   We have been contracted--  
17      we entered into a contract for the trial itself.

18              BY THE COURT:   Have you got a written contract?

19              BY MR. JOHN GILMORE:   Yes, Your Honor.

20              BY THE COURT:   Let me see it.

21              (Long pause).

22              BY MR. JOHN GILMORE:   If the Court will indulge  
23      us just a minute.

24              (Mr. Gilmore hands document to the Court.)

25              BY THE COURT:   You can have a seat back there.

26              (Pause while the Court reads.)

27              BY THE COURT:   I want a copy of this made a part  
28      of the record, okay?

29              BY MR. JOHN GILMORE:   Yes, Your Honor.



1 (THE CONTRACT WITH MR. JOHN GILMORE WAS RECEIVED  
2 IN EVIDENCE AND MARKED AT THE CONCLUSION OF THIS HEARING  
3 AS DEFENDANT'S EXHIBIT DP-1 TO THE POST TRIAL MOTION.)

4 BY THE COURT: Have you seen-- you haven't seen  
5 this. Do you want to see it?

6 BY MR. EVANS: Yes, sir. I would like to.

7 (Document handed to Evans; pause while he  
8 reads).

9 BY MR. JOHN GILMORE: Your Honor, if I may  
10 proceed while he finishes up?

11 BY THE COURT: Is that all right with you, Mr.  
12 Evans?

13 BY MR. EVANS: Sir?

14 BY THE COURT: He wants to proceed while you  
15 read; is that all right?

16 BY MR. EVANS: Yes, sir.

17 BY MR. JOHN GILMORE: I just want to let the  
18 Court be aware that that contract was made prior to  
19 arraignment, prior to indictment. At that time we only  
20 knew that he was being charged with four counts of capital  
21 murder. We did not know that he was going to be indicted  
22 in four separate charges, and we did not know that the  
23 State intended on having four separate trials.

24 BY THE COURT: You should have anticipated that,  
25 Mr. Gilmore.

26 BY MR. JOHN GILMORE: Well.

27 BY THE COURT: I mean that is not unusual. Your  
28 father would know that.

29 BY MR. JOHN GILMORE: He was not there when the

1 contract was entered into.

2 BY THE COURT: You should have anticipated  
3 that. Mr. Evans.

4 BY MR. EVANS: Very briefly, Your Honor, to  
5 start with, I don't think the contract is a binding valid  
6 contract for several reasons. One, it gives them the  
7 option to get out once they have taken a fee, and in the  
8 State of Mississippi, I don't think that is proper. Once  
9 they have accepted a fee, they are required to represent  
10 their client. The case, this particular case, as the  
11 Court has previously said, the time that they took this  
12 case, or the time that John Gilmore took this case, was  
13 before we had even presented the case to the Grand Jury.  
14 The case was, it was left up to me at that point whether  
15 there was one indictment with four counts or four separate  
16 indictments, and they should have assumed the worst, that  
17 it would be four separate indictments in the case.

18 I don't know what provisions or what contract Billy  
19 Gilmore has other than this one. This contract, I think,  
20 only deals with John Gilmore. So I assume there is  
21 another contract out there also or at least a verbal  
22 contract. But I can see no reason why they should be  
23 allowed at this point after accepting a fee to ask the  
24 Court for money.

25 BY THE COURT: Have you got a contract?

26 BY MR. BILLY GILMORE: Your Honor, I was only  
27 retained by my son to assist him. That is the only  
28 contract. As far as the appeal, I think at this point not  
29 to grant this Motion would deny him due process.

1 BY THE COURT: How is that? He has got lawyers.

2 BY MR. BILLY GILMORE: Yes, sir, but I believe  
3 Abraham Lincoln freed the slaves back in 1860 something.

4 BY THE COURT: What has that got to do with this  
5 case, Mr. Gilmore?

6 BY MR. BILLY GILMORE: Well, I don't think we  
7 are required--

8 BY THE COURT: --What kind of point are you  
9 trying to make about that, Mr. Gilmore?

10 BY MR. BILLY GILMORE: Your Honor, I don't think  
11 we are required to work for nothing.

12 BY THE COURT: You are not working for nothing.  
13 You were paid ten thousand dollars.

14 BY MR. BILLY GILMORE: Well.

15 BY THE COURT: You are also officers of the  
16 Court, and you have an obligation to pursue your client's  
17 interests once you have been paid for it. The motions to  
18 begin with, the motions about appointing indigent counsel  
19 and things like that are not proper motions before the  
20 Court. The law is clear on that. You must file a motion  
21 to withdraw and let the Court consider it in that  
22 context. The Court directs, in relation to this appeal,  
23 directs that you perfect this appeal. If you want to  
24 withdraw, you file a motion to withdraw with the Supreme  
25 Court. If they send it back to me and say that you are  
26 entitled to withdraw, then I will appoint indigent  
27 counsel. It will not be you, but I will appoint indigent  
28 counsel for the Defendant. But that is a matter that you  
29 need to bring before the Supreme Court.

1           In relation to the other four counts, I anticipate  
2 this coming up. The contract calls for you to represent  
3 this man on four counts, and without a doubt you are  
4 obligated to represent him on, if there are four trials,  
5 you have the obligation to represent him. While you have  
6 a contract, that is not the sole-- you can't, being an  
7 officer of the Court, you can't contract, make a contract  
8 with your client that necessarily binds the Court. I have  
9 to look to the public good in this and what is  
10 appropriate. I find that appointing you after you have  
11 received a ten thousand dollar fee-- anybody that takes a  
12 criminal case, especially a capital case, has to  
13 anticipate that there will be an appeal. Everybody has to  
14 anticipate that. If you do any criminal law at all, you  
15 know that that is likely to happen, and you can't contract  
16 amongst you and your client to put the Court in a position  
17 to have to have the county pay you for something you have  
18 already been paid ten thousand dollars to do, and this  
19 Court is not going to do it. Now if you get the Supreme  
20 Court to do it and they send it back to me, I am going to  
21 do exactly what they say, and I will appoint indigent  
22 counsel to represent him.

23           On the other issue that is raised, I have got no  
24 evidence before me about, whether him proceeding in the  
25 forma pauperis. If Mr. Flowers wants to testify on that  
26 point, I will entertain that.

27           BY MR. JOHN GILMORE: Your Honor, we call the  
28 Defendant, Curtis Flowers.

29           BY THE COURT: Okay, raise your right hand, Mr.

1 Flowers.

2 CURTIS G. FLOWERS,  
3 a black male, having first been duly sworn by the Court,  
4 testified on the post trial motion hearing as follows,  
5 to-wit:

6 BY THE COURT: This is for purposes-- I don't  
7 care about any cross-examination on this. I just  
8 want to inquire as to his financial status.

9 EXAMINATION BY THE COURT:

10 Q. Where did you get the ten thousand that you paid Mr.  
11 Gilmore?

12 A. We raised it.

13 Q. Okay, did you, do you have any money?

14 A. No, sir.

15 Q. None in the bank at all?

16 A. No, sir.

17 Q. Do you own anything?

18 A. No, sir.

19 Q. Own a vehicle?

20 A. No, sir.

21 Q. Own any land?

22 A. No, sir.

23 Q. What are your assets?

24 A. Huh?

25 Q. What are your assets? What do you own?

26 A. What do I own?

27 Q. Uh-hum.

28 A. Nothing.

29 BY THE COURT: Okay. I find that he is indigent

1           for the purposes of paying costs of the appeal, and I  
2           will allow him to appeal the case in forma pauperis,  
3           and the state will pay-- Montgomery County will pay  
4           the costs of the appeal with the exception of  
5           attorney's fees which are not allowed. The Motion  
6           for Appointment of Indigent Counsel is denied. The  
7           petition asking for attorney's fees for that appeal  
8           is also denied. The petition asking that he be  
9           allowed to proceed in forma pauperis on his appeal  
10          with Montgomery County to pay all the expenses except  
11          attorneys fees is granted. Draw me an order to that  
12          effect. I want a copy of that in the file. Anything  
13          else?

14                 (Defense Counsel confer).

15           **BY THE COURT:** Have y'all got further motions?

16           **BY MR. JOHN GILMORE:** Yes, Your Honor.

17                 (Documents handed to State's Counsel and to the  
18          Court.)

19           **BY MR. JOHN GILMORE:** We have two further  
20          motions, but I think they are going to be in the three  
21          remaining cause numbers.

22           **BY THE COURT:** Okay.

23                 (PROCEEDINGS CONTINUED BUT PERTAINED ONLY TO THE  
24          REMAINING THREE CAUSE NUMBERS AND THUS WERE NOT INCLUDED  
25          WITH THE TRANSCRIPT OF THIS CAUSE NUMBER.)

26  
27                         END OF TRANSCRIPT  
28  
29

COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI

COUNTY OF LEE

I, Mrs. Linda F. Burchfield, Official Court Reporter for the Fifth Circuit Court District of the State of Mississippi, Notary Public of the State of Mississippi, and Official Court Reporter in this case by virtue of a change of venue from Montgomery County, Mississippi, do hereby certify that to the best of my skill and ability I have reported the proceedings of STATE OF MISSISSIPPI v. CURTIS GIOVANNI FLOWERS, being No. CR97-369 on the docket of the Circuit Court of Lee County, Mississippi, and that the foregoing 1121 pages contain a true, full and correct transcript of my stenographic notes and tape taken in said proceedings.

This is to further certify that I have this date filed the original and one copy of said transcript, along with two 3.5" electronic disks of said transcript in ASCII language, for inclusion in the record on appeal, with the Clerk of the Circuit Court of Lee County, Mississippi, and have notified the attorneys of record, the Circuit Clerk, and the Supreme Court Clerk of my actions herein.

I do further certify that my certificate annexed hereto applies only to the original and certified

1 State v. Curtis Giovanni Flowers

2 Lee County Circuit #CR97-369

3 COURT REPORTER'S CERTIFICATE (Continued)

4  
5 transcript and electronic disks. The undersigned assumes  
6 no responsibility for the accuracy of any reproduced  
7 copies not made under my control or direction.

8  
9 This the 10<sup>th</sup> day of December 1997.

10  
11  
12  
13 Linda F. Burchfield

14 LINDA F. BURCHFIELD, C.S.R. #1019

15 Official Court Reporter

16 46 Still Water Circle

17 Eupora, Mississippi 39744

18  
19 COURT REPORTER'S COSTS FOR TRANSCRIBING

20 THE WITHIN, FILING WITH THE CLERK'S OFFICE,

21 AND COSTS ATTENDANT THERETO: \$2,290.00

22  
23  
24  
25  
26  
27  
28  
29